

EXHIBIT B

ORIGINAL

1

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 -----X
4 ADRIAN SCHOOLCRAFT,

5 PLAINTIFF,

6 -against-

Case No:
10 Civ. 6005
(RWS)

7 THE CITY OF NEW YORK, DEPUTY CHIEF MICHAEL MARINO,
8 Tax Id. 873220, Individually and in his Official
9 Capacity, ASSISTANT CHIEF PATROL BOROUGH BROOKLYN
10 NORTH GERALD NELSON, Tax Id. 912370, Individually
11 and in his Official Capacity, DEPUTY INSPECTOR
12 STEVEN MAURIELLO, Tax Id. 895117, Individually and
13 in his Official Capacity, CAPTAIN THEODORE
14 LAUTERBORN, Tax Id. 897840, Individually and in his
15 Official Capacity, LIEUTENANT WILLIAM GOUGH, Tax Id.
16 919124, Individually and in his Official Capacity,
17 SGT. FREDERICK SAWYER, Shield No. 2576, Individually
18 and in his Official Capacity, SERGEANT KURT DUNCAN,
19 Shield No. 2483, Individually and in his Official
20 Capacity, LIEUTENANT CHRISTOPHER BROSCART, Tax Id.
21 915354, Individually and in his Official Capacity,
22 LIEUTENANT TIMOTHY CAUGHEY, Tax Id. 885374,
23 Individually and in his Official Capacity, SERGEANT
24 SHANTEL JAMES, Shield No. 3004 and P.O.'s "JOHN DOE"
25 #1-50, Individually and in their Official Capacity
(the name John Doe being fictitious, as the true
names are presently unknown) (collectively referred
to as "NYPD defendants"), JAMAICA HOSPITAL MEDICAL
CENTER, DR. ISAK ISAKOV, Individually and in his
Official Capacity, DR. LILIAN ALDANA-BERNIER,
Individually and in her Official Capacity and
JAMAICA HOSPITAL MEDICAL CENTER EMPLOYEES "JOHN
DOE" #1-50, Individually and in their Official
Capacity (the name John Doe being fictitious, as
the true names are presently unknown),

DEFENDANTS.

-----X
DATE: October 24, 2014
TIME: 10:14 A.M.

(Deposition of ELI B. SILVERMAN, PhD)

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DATE: October 24, 2014

TIME: 10:14 A.M.

DEPOSITION of an Expert Witness,
DR. ELI B. SILVERMAN, PhD, taken by the Respective Parties,
Pursuant to a Notice and to the Federal Rules of
Civil Procedure, held at the offices of the New
York City Law Department, 100 Church Street,
New York, New York 10007, before John A. Lugo,
a Notary Public of the State of New York

DR. ELI B. SILVERMAN

1 Q. Have you updated your CV since the one in front
2 of you right here?

3 A. No, I have not.

4 Q. From where did you receive your bachelor's
5 degree?

6 A. Allegheny College.

7 Q. And where is that?

8 A. Pennsylvania; Meadville, Pennsylvania.

9 Q. Do you hold any advanced degrees?

10 A. I hold advanced degrees that are on my CV.

11 Q. What advanced degrees do you hold?

12 A. MA and a PhD.

13 Q. And what is your masters's in?

14 A. Public administration.

15 Q. From where did you receive your PhD?

16 A. Pennsylvania State University.

17 Q. Have you ever attended law school?

18 A. No.

19 Q. Have you ever taken any courses at any law
20 school?

21 A. In any law school, no.

22 Q. Are you an attorney?

23 A. No.

24 Q. Have you attended classes as a student at any
25 university since you received your PhD?

DR. ELI B. SILVERMAN

1 of?

2 MR. SMITH: Objection to form. You can
3 answer.

4 A. That's correct.

5 Q. And the other sections Dr. Eterno did the initial
6 draft of?

7 MR. SMITH: Objection to form. You can
8 answer.

9 A. Yes.

10 Q. Are there any sections of this report which you
11 don't feel competent to answer questions?

12 A. The section on Schoolcraft and the extent to
13 which that adhered to police procedures, that really is
14 within Dr. Eterno's bailiwick and based on his experience
15 within the police department and additionally as an
16 academic, so that -- he is competent in that area and not
17 me.

18 Q. Are there any other areas about the report about
19 which you don't feel competent to answer questions?

20 MR. SMITH: Objection to form.

21 A. May I look at the report?

22 Q. Yes, please.

23 (Whereupon, the Witness perused the
24 document.)

25 A. No.

DR. ELI B. SILVERMAN

1 A. The report offers an opinion.

2 Q. And what is that opinion?

3 A. That the police department violated its own
4 procedures.

5 Q. And on what is that opinion based?

6 A. It's based on Dr. Eterno's familiarity with the
7 procedures, his work in that field, and his expertise in
8 that field.

9 Q. So, aside from Dr. Eterno's familiarity and work
10 in that field, can you tell me anything else on which your
11 opinion about the propriety of declaring Adrian Schoolcraft
12 an emotionally disturbed person was based?

13 A. That's what I relied on, my previous answer.

14 Q. Do you personally know what the NYPD's procedures
15 on emotionally disturbed persons are?

16 A. I only know from Dr. -- I only know from this
17 report what Dr. Eterno conveyed to me.

18 Q. Did you play any role in the creation of the
19 opinion about Adrian Schoolcraft being declared an
20 emotionally disturbed person?

21 A. No.

22 MR. KRETZ: Can you read that question back,
23 please.

24 (Whereupon, the referred to question was
25 read back by the Reporter.)

DR. ELI B. SILVERMAN

1 Q. If you could turn to page 2 of your expert
2 report. In the section titled Compstat as performance
3 management system you state that the range of information
4 in Compstat books expanded widely to include summonses --

5 MR. SMITH: Where are you reading from?

6 MS. PUBLICKER METTHAM: It begins at the end
7 of page 2 and goes on to page 3.

8 Q. The range of information in Compstat books
9 expanded widely to include summonses, stop-and-frisk
10 encounters, quality of life violations and numerous other
11 activities. Is that correct?

12 MR. SMITH: Objection to form. I don't
13 think you read the thing that you were purporting
14 to read correctly.

15 MS. PUBLICKER METTHAM: What did I get
16 wrong, Mr. Smith?

17 MR. SMITH: Well, the sentence you just
18 directed me to starts with, As the years
19 progressed the range of information expanded
20 widely.

21 I didn't hear that part of what you read.

22 MS. PUBLICKER METTHAM: I didn't ask if that
23 was the complete sentence. I asked if what I
24 read appears in your report.

25 Q. Does it appear in your report?

DR. ELI B. SILVERMAN

1 MR. SMITH: Well, I think it's misleading to
2 not tell the witness where you're reading from
3 and then read part of a sentence. It's not a
4 memory test. Why don't you point him to your
5 what you're asking.

6 MS. PUBLICKER METTHAM: Mr. Smith, I did
7 point to him pages 2 to 3.

8 MR. SMITH: No, you didn't. Actually, you
9 said to turn to page 2 and then what you read was
10 the word "the" on page 2 and the rest of the
11 quote was supposedly from page 3.

12 So, my suggestion to you is that you direct
13 the witness to the part that you're trying to
14 read and then read it accurately after he's had
15 a chance to look at what you're reading from.

16 Q. Dr. Silverman, what Compstat books did you review
17 in preparation of your opinion for this expert report?

18 A. I didn't look at them in -- I've looked at them
19 over the years, so I'm aware of the Compstat book and I
20 know this is the case, so I didn't have to look at them.

21 Q. Do you still have copies of the Compstat books
22 you've seen prior?

23 A. Yes.

24 MS. PUBLICKER METTHAM: I would call for
25 production of those Compstat books.

DR. ELI B. SILVERMAN

1 MR. SMITH: Taken under advisement.

2 Q. When was the last time you looked at a Compstat
3 book?

4 A. Maybe 2008.

5 Q. Have you ever seen a Compstat book with stop,
6 question and frisk activity listed?

7 A. Yes.

8 MS. PUBLICKER METTHAM: I will call for
9 production of that Compstat book.

10 MR. SMITH: We will take it under
11 advisement.

12 Q. What quality of life violations do you believe
13 are included on Compstat books?

14 A. ECB, vehicle, C summonses.

15 Q. What numerous other activities do you believe are
16 listed in Compstat books?

17 A. It varies. They're not always the same.
18 Sometimes they'll have domestic violence, sometimes they'll
19 have -- sometimes they'll have FADO reports. Sometimes
20 they'll have civilian complaints.

21 Q. When you say Compstat book, what do you mean?

22 A. Each meeting -- Compstat book comes out every
23 28 days and each meeting there's a -- the inquisitors at
24 the Compstat meeting have a very thick book and that's what
25 I mean by the Compstat book.

DR. ELI B. SILVERMAN

1 Q. You said the last time you looked at a Compstat
2 book was 2008. For what year and month was that Compstat
3 book prepared?

4 A. Oh, it was sometime in 2008. I can't --

5 Q. And is it your understanding that that Compstat
6 book included stop, question and frisk activity?

7 A. Yes.

8 Q. And that Compstat book included this other
9 activity you referenced?

10 A. I can't recall which activities were there, but I
11 can say that 250s are included.

12 Q. How did you obtain that Compstat book?

13 A. When I attended the meeting.

14 Q. Your report states that Compstat meetings were
15 originally held twice weekly in 1994; is that correct?

16 A. Yes.

17 Q. Do you know how often the meetings are held now?

18 A. I think they're now once a week, but there can be
19 meetings that occur for special purposes. For example, if
20 there are spikes in certain precincts. So special meetings
21 would come -- my understanding is -- let me rephrase, if I
22 may.

23 I'm talking about only since this -- prior to the
24 new administration. I don't know what the new
25 administration is doing. So, I would have to refer my

DR. ELI B. SILVERMAN

1 A. I'm aware that there's great deal of controversy
2 in that literature.

3 Q. So, you don't believe literature that states that
4 police officers have a higher rate of suicide than members
5 of the general public?

6 A. I'm aware that some literature says that, I'm
7 also aware that some literature doesn't say that.

8 Q. What literature?

9 A. I don't recall the literature, but I know --

10 Q. And which literature do you believe personally?

11 A. I don't know, I never studied it.

12 Q. On what basis could members of the NYPD remove
13 any property of Adrian Schoolcraft from his home without
14 his expressed consent?

15 MR. SMITH: Objection to form.

16 A. I don't know that police procedure.

17 Q. Do you know legally whether police members may
18 remove evidence from a civilian's home without a warrant?

19 MR. SMITH: Objection to form.

20 A. It depends on the situation. I can't make a
21 carte blanche whether or not. I mean, you have to say is
22 very often that winds up in court, is that a violation of
23 the Fourth Amendment or not.

24 Q. So, you can't say whether members of the NYPD had
25 any authority to remove any property from Adrian

DR. ELI B. SILVERMAN

1 Schoolcraft's home the night of October 31, 2009?

2 MR. SMITH: Objection to form.

3 A. I have no way of assessing that.

4 Q. And you stated that you personally can make no
5 opinion about the decision to declare Adrian Schoolcraft an
6 emotionally disturbed person that night, correct?

7 A. The only -- I can make no decision?

8 Q. Opinion.

9 A. Oh, opinion. No, the only opinion I have is I
10 have great confidence in the ability of Dr. Eterno to
11 assess this information.

12 Q. But personally you don't hold an opinion?

13 A. Personally, my opinion leans towards him based on
14 his expertise, but I don't have any independent basis for
15 making an opinion.

16 Q. Do you have any medical training?

17 A. No.

18 Q. Do you have any psychological training?

19 A. No.

20 Q. Are you testifying here as a legal expert?

21 A. No.

22 Q. The next section in your report on page 11 is
23 hospital data. To what hospital data specifically are you
24 referring in this section?

25 A. This was hospital data that was available from

DR. ELI B. SILVERMAN

1 the New York City Department of Health and Mental Hygiene.

2 Q. Are you in possession of that data?

3 A. No.

4 Q. When was the last time you looked at that data?

5 A. Years ago.

6 Q. You cite very specific numbers in this section,
7 correct?

8 A. Yes.

9 Q. How did you come up with those numbers if you no
10 longer have the data and the last time you looked at it was
11 years ago?

12 A. Because we wrote about it in our book, The Crime
13 Numbers Game, management by manipulation.

14 Q. And you kept no copies of that data after
15 creating --

16 A. I -- I --

17 Q. If you'll let me finish.

18 MR. SMITH: Let her finish the question.

19 A. I'm sorry. I'm sorry.

20 Q. You kept no copies of that data after writing
21 that book?

22 A. I didn't write that part. It was joint with John
23 Eterno, he wrote that part.

24 Q. So, are you competent to testify about this
25 section of your report?

DR. ELI B. SILVERMAN

1 A. No.

2 Q. So, you can't tell me about the definitions of
3 assault by the health and mental hygiene or the NYPD?

4 A. No.

5 Q. The next section is titled lack of transparency
6 on page 12.

7 A. Yes.

8 Q. You mentioned Mark Pomerantz?

9 A. Yes.

10 Q. You state he resigned from the commission to
11 combat corruption in 2005; is that correct?

12 A. Yes.

13 Q. Was he seeking actual crime reports with victim
14 and perpetrator information?

15 A. I don't remember exactly what he was looking at,
16 but he was wanting to examine -- he had been told
17 anecdotally by many police that the crime reports were not
18 accurate and my recollection, that was 2005. My
19 recollection is he requested that from the police
20 department. And the police department responded that that
21 was not within his ambit. And that commission does not
22 have subpoena power. So he could not secure that data and
23 there are press reports, several press reports on this.
24 And he couldn't get it and that he was a former federal
25 prosecutor of great respect at that time, and that's what

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1 we said.

2 Q. And it is your understanding of Mark Pomerantz
3 and the commission to combat corruption based solely on
4 media reports?

5 A. I think I spoke to a couple of people. I was at
6 one breakfast, I think I was -- I had a conversation with
7 Armstrong, who was the chief prosecutor in the Knapp
8 Commission, and I think I discussed -- my recollection is I
9 discussed this with him, and he had the same sense as I
10 did.

11 Q. And was Armstrong on the commission to combat
12 corruption?

13 A. No.

14 Q. Do you know on what his opinions were based?

15 A. He's a very wise man. He's been around a long
16 time. I didn't ask him what his opinions were based on.

17 Q. So, this section that discusses the commission to
18 combat corruption and Mark Pomerantz is based on media
19 articles and a discussion with Armstrong who was not a
20 member of the commission; is that correct?

21 A. Yes.

22 Q. What other cities in the country make crime
23 complaints with victim and perpetrator information
24 available?

25 A. Cincinnati, L.A. -- well, I have to take that

DR. ELI B. SILVERMAN

1 back. When you say available, I'm not sure what you mean.

2 Q. Do they make it available to the public?

3 A. They make it available -- many of these cities
4 have independent bodies that review it and they often make
5 that available. In New York there is no such body.

6 Q. And these other cities that you're referring to
7 with an independent body, do they have subpoena power?

8 A. Some do and some don't, I can't recall who does
9 and who doesn't.

10 Q. Are you familiar with New York criminal procedure
11 law 160.50 and 160.55?

12 A. We've established that I'm not a lawyer. No, I'm
13 not.

14 Q. The question is, are you familiar with those
15 sections?

16 A. The answer is I'm not.

17 Q. Are you aware of sealing provisions of New York
18 State law with criminal convictions?

19 A. No.

20 Q. Are you aware of laws that protect the identities
21 of sexual assault victims?

22 A. I've heard about that.

23 Q. Are you aware of New York State laws that protect
24 the identities of minors who are the victims of crime?

25 A. I've heard about that.

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1 Q. On page 12, you reference the report of the crime
2 reporting committee to Commissioner Raymond W. Kelly
3 concerning Compstat auditing; is that right?

4 A. Uh-huh.

5 Q. Is that a yes?

6 A. Yes. Sorry.

7 Q. Did you review that document in creating this
8 expert report?

9 A. We reviewed that document when we wrote our book.

10 Q. Is that a yes or no to my question?

11 A. I tried to be responsive, not in creating this
12 report, but in writing the book.

13 Q. And when did you write the book?

14 A. The book came out in 2012.

15 Q. So, when did you last read the report of the
16 crime reporting committee to Commissioner Raymond W. Kelly
17 concerning Compstat auditing?

18 A. When we wrote some articles, I guess it wasn't in
19 the report. It wasn't in the book, it was in articles
20 later. So I read it when it came out in 2013.

21 Q. Were you consulted in the creation of that
22 report?

23 A. It depends what you mean by consulted.

24 Q. Did you meet with the committee?

25 A. Yes.

DR. ELI B. SILVERMAN

1 Q. How would you characterize your meeting with the
2 committee?

3 A. How would I characterize it?

4 Q. Yes.

5 A. What were my impressions of it?

6 Q. What kind of meeting did you have with the
7 committee?

8 A. John and I were invited to meet with the
9 committee, I can't tell you when. There were two members
10 there, the third one wasn't there. They were asking us
11 what our ideas were in assessing it in doing their job and
12 they shared with us some of their ways that they were going
13 to go about doing it. They were very friendly and very
14 solicitous.

15 Q. How many times did you meet with the committee?

16 A. Once.

17 Q. Did you believe that the committee took the
18 information you provided seriously?

19 A. I believe they listened to us, but I also thought
20 that they were limited in to whether or not -- the were
21 limited in to what they can accomplish.

22 Q. What do you mean by that?

23 A. I mean that A, they were appointed by the
24 commissioner even though they were respected people. They
25 weren't in an outside body. They reported to the

DR. ELI B. SILVERMAN

1 commissioner. They were dependent on the police department
2 for the resources and how do you address this. So, they
3 said to us that they were essentially looking at the
4 auditing system. And that's only part of the equation.

5 So, therefore, we concluded that this was --
6 could not -- no reflection on these people, they were very
7 competent people who had full-time jobs in law firms, both
8 the two people we met were in law firms, the third one was
9 also. So there was a limit on how much they could do and
10 my sense of it I would characterize it as they knew that
11 this was an awesome task. And that's the impression I got
12 from them, that's the impression I got from them.

13 Q. Who were the two members with whom you met?

14 A. McCarthy and the other -- the fellow who died, I
15 forget his name. Italian name, I forget his name. And the
16 third one, female, McCarthy couldn't make it.

17 Q. Did the report generated by that committee
18 include any strengths with regard to the Compstat auditing
19 process?

20 A. Yes.

21 Q. What strengths were those?

22 A. They felt that there was a good system, it was
23 being reviewed, they liked the way it was set up.

24 Q. Do you agree with those conclusions by the
25 committee about the strengths of the Compstat auditing

DR. ELI B. SILVERMAN

1 process?

2 A. I believe there are strengths.

3 Q. But do you agree with what the committee said
4 were the strengths of the Compstat auditing process?

5 A. Yes.

6 Q. The committee found that misclassifications
7 generally fell within two categories, right?

8 A. Sounds familiar.

9 Q. Do you recall the committee stating that they
10 believe the first category of misclassifications were
11 errors surrounding identity theft, forgery and larceny in
12 cases involving stolen credit cards and Social Security
13 numbers?

14 A. Sounds familiar.

15 Q. And isn't it true that the committee did not
16 believe that those were intentional misclassifications?

17 A. That's correct.

18 Q. And the second category of misclassifications
19 found by the committee was the downgrading of complaint
20 reports with respect to robberies, burglaries and
21 larcenies. Do you recall that?

22 A. Yes.

23 Q. And that the committee found that within that
24 category of misclassifications there was a pattern of
25 larcenies being downgraded to lost property in instances

DR. ELI B. SILVERMAN

1 where the complainants did not actually see their property
2 being stolen and did not feel that they were the victims of
3 crime.

4 A. Yes.

5 Q. Do you recall that?

6 A. Yes.

7 Q. So, did the committee's findings that many
8 instances of misclassifications were due to innocent
9 downgradings, so to speak, did that change your opinion
10 about Compstat in any way?

11 A. This is not my opinion of Compstat. This doesn't
12 relate to my opinion of Compstat. This relates to my
13 opinion of the extent to which the crimes are categorized.
14 They could not -- they could not, for example, go into a
15 precinct and hire someone and report a crime and see
16 whether or not, in fact, that crime report was taken. They
17 don't have that -- they didn't have that ability, that
18 ability to do that. They acknowledged that to us. They
19 cannot look at it. They were looking at the formal
20 structure. And so within the purview of what they looked
21 at, I agree. But no one's actually gone deeper. And
22 that's what we base our opinion on.

23 Q. And your opinion is that much of the
24 misclassification, if not all, of crime complaints was due
25 to pressure from Compstat; is that correct?

DR. ELI B. SILVERMAN

1 A. A good deal.

2 Q. And the fact that the committee's report
3 indicated that many misclassifications were due to
4 misunderstandings doesn't change your opinion in any way?

5 A. No, because I think it flies in the face of a
6 great deal of evidence.

7 Q. Did you tell the committee that?

8 A. I didn't meet with them after. We only met with
9 them while they were preparing it, so how could I tell them
10 that?

11 Q. My question was simply requesting a yes or no
12 answer, Dr. Silverman.

13 A. Well, my answer is I can't answer that question
14 because I didn't meet with them.

15 Q. So, the answer is no?

16 A. Of course it's no.

17 Q. Are you aware of any large city police
18 departments who have a better system of Compstat auditing
19 procedures?

20 A. I'm aware of cities that release their
21 information to an independent third-party. This is all
22 over the world. This is not just New York City. There are
23 cities all over the world that do this and there are cities
24 that don't do it.

25 When you finish this section, I need to run to

DR. ELI B. SILVERMAN

1 the bathroom.

2 Q. If you'd like we can take a break right now.

3 A. Okay. Thank you.

4 MS. PUBLICKER METTHAM: Time is 4:21.

5 (Whereupon, a brief recess was taken.)

6 MS. PUBLICKER METTHAM: We are back on at

7 4:31.

8 Q. You mentioned that cities do release information
9 to independent third-parties. Can you name any of those
10 cities in the United States?

11 A. Los Angeles, Pittsburgh, I can't recall any more
12 offhand.

13 Q. And those cities are subject to department of
14 justice consent decree, correct?

15 A. Well, I think Los Angeles is now no longer
16 subject to consent decree.

17 Q. And Pittsburgh?

18 A. I don't know if Pittsburgh is still under consent
19 decree. I don't recall. Newark is under consent decree.

20 Q. And do they release their information to
21 independent third-parties?

22 A. Yes.

23 Q. In the next section, on page 13, is additional
24 information from audiotapes from Officer Schoolcraft,
25 plaintiff?

DR. ELI B. SILVERMAN

1 A. Uh-huh.

2 Q. Is that a yes?

3 A. Yes.

4 Q. You begin that section by mentioning your
5 recording of Sergeant Huffman and October 12, 2009; is that
6 right?

7 A. October 12, 2009, I see that.

8 Q. And you believe that her recording shows that she
9 clearly violated department guidelines; is that right?

10 A. Yes.

11 Q. Would you have to be an expert to understand that
12 what she said clearly violated department guidelines?

13 A. An expert in what?

14 Q. In policing.

15 MR. SMITH: Objection to form.

16 A. In police practices?

17 Q. Yes.

18 A. I would say that Dr. Eterno is an expert in
19 police practices. So, I would say he does understand it.

20 Q. Do you believe that you would have to be an
21 expert in police practices to understand that what Sergeant
22 Huffman said on October 12, 2009 clearly violated
23 department guidelines?

24 A. I would say it depends on how you define the word
25 expert, seriously.

DR. ELI B. SILVERMAN

1 Q. I define expert under the federal rules of civil
2 procedure.

3 A. Which is?

4 MR. SMITH: Well, he doesn't know what that
5 is.

6 Q. Which is an expert akin to what you are here.

7 MR. SMITH: I'll object to the form of that.

8 MS. PUBLICKER METTHAM: That's fine, the
9 witness can answer.

10 MR. SMITH: An expert is a term of art.

11 MS. PUBLICKER METTHAM: That's fine, the
12 witness can answer.

13 MR. SMITH: Okay. Fine. Given the fact
14 that there's been no definition, I object to the
15 form.

16 A. I would say you have to be very knowledgeable to
17 answer that. I don't know about the word expert.

18 Q. Are you very knowledgeable about police
19 procedure?

20 A. No.

21 Q. Did you read Sergeant Huffman's deposition
22 transcript?

23 A. No.

24 Q. Have you heard any other recordings besides the
25 October 12, 2009 recording in which Sergeant Huffman is

DR. ELI B. SILVERMAN

1 heard?

2 A. Not that I recall.

3 Q. Do you know whether Sergeant Huffman is a
4 defendant?

5 A. I do not know.

6 Q. Have you heard any recordings in which Sergeant
7 Huffman explains that the reason she made those comments
8 was that a change had been made to cell phone provider
9 contracts and that people were claiming to have had a cell
10 phone stolen to get a replacement for a lost or broken
11 phone?

12 A. I'm not aware of that.

13 Q. If true, would Sergeant Huffman's statements be
14 an example of the downgrading of crime complaints for
15 Compstat purposes?

16 MR. SMITH: Objection to form.

17 A. I would have to see -- hear the transcript and
18 look at it and then make a judgment.

19 Q. And you did not do that in this case?

20 A. Well, since I didn't have it, I could not do it.

21 Q. Your research was completely anonymous, correct?

22 A. Yes.

23 Q. You didn't gather the names of anyone surveyed in
24 2008 or 2012?

25 A. No.

DR. ELI B. SILVERMAN

1 Q. Who did the statistical analysis in your 2008 and
2 2012 surveys?

3 A. It was primarily done by Professor Eterno.

4 Q. What role did you play in the statistical
5 analysis of the 2008 and the 2012 surveys?

6 A. I reviewed it, but he did the SPSS program.

7 Q. So, you did not run the SPSS program?

8 A. That's correct.

9 Q. For either 2008 or 2012?

10 A. That's correct.

11 Q. Did you conduct your surveys using a random
12 sampling?

13 A. It was a random sample, it was a sample of those
14 who were in the category that we surveyed.

15 Q. And you surveyed retirees?

16 A. That's correct.

17 Q. Would a random sampling have given you a better
18 representative sample?

19 A. Not necessarily because we didn't know the
20 categories of people, particularly for the second one, we
21 just sent it to all the retirees on the active list, so
22 that might not have been feasible.

23 Q. I'm not asking you whether it was feasible. I'm
24 asking whether a random sampling would have given you a
25 better representative sample of the NYPD as a whole?

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1 A. Only if we had a complete list of everyone, which
2 we didn't have.

3 Q. Did you ask respondents in 2008 or 2012 when
4 pressure began for them?

5 A. No, we asked them when they experienced it based
6 on the time they were in the police department. Except, I
7 will say, that the only thing that really, I think,
8 addresses your question is, that we found that those who
9 were in the -- when we did the second survey, those who
10 were in the third year category, 2002 to 2012, were the
11 ones who indicated the most pressure.

12 Q. But your survey didn't indicate when within 2002
13 to 2012 that pressure began?

14 A. That's correct.

15 Q. Did you ask any survey respondents whether they
16 violated anyone's rights?

17 A. Whether they individually violated? No, we never
18 looked at that as our purview, that's not our job.

19 Q. What did you consider your job?

20 A. Our job is to find out information, not to
21 prosecute people and not to find individual wrongdoing,
22 that's not our job, that's the police department's job.

23 Q. But the survey was anonymous, correct?

24 A. Yes.

25 Q. So, it wouldn't be prosecution of survey

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1 respondents if they indicated that they had violated
2 someone's rights?

3 A. We asked individuals whether the pressure was
4 high, medium or low pressure to obey constitutional legal
5 rights, so that's one way of getting at your question. But
6 as far as individual, we're not interested in individual
7 culpability.

8 Q. But your question got at whether they felt
9 pressure not what they did as a result of that pressure,
10 correct?

11 A. That's correct.

12 Q. And you just stated that you asked them whether
13 they felt high, medium or low pressure, correct?

14 A. Well, we gave them a Likert test of ten and as
15 you know -- L-I-K-E-R-T, that's a social psychologist who
16 first developed this scale. So the high, medium and low is
17 a product of collapsing the one to ten scale.

18 So, to be more precise in responding to your
19 question, we didn't ask them high, medium, low, we asked
20 them the number and then we collapsed the number into high,
21 medium, low.

22 Q. Why did you give numbers if you were going to
23 group the results by low, medium and high?

24 A. Well, when you give numbers you give the people
25 an opportunity to indicate gradations of how they feel and

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1 most people respond better on a scale of one to ten than
2 high, medium, low. It's a more refined way of asking the
3 question.

4 Q. Is it possible that if you had asked officers to
5 rate pressure low, medium or high you would have had
6 different results than how you rated low, medium or high?

7 A. All I could say is anything is possible, but I
8 think ours is probably more accurate, our way, because
9 you're getting -- it's easier to get someone to focus on a
10 number and give them an option between three or four or
11 five and six or nine and ten or whatever, it's easier that
12 way.

13 Q. Did you ever define the term pressure in your
14 surveys?

15 A. No.

16 Q. Why not?

17 A. Because the word pressure is so well-known by
18 police and the police literature and there's a whole litany
19 of studies that use the word pressure in the organizational
20 literature and the police literature.

21 Q. Do you believe that rank and file members of the
22 NYPD reviewed the police literature and litany of studies
23 you just mentioned?

24 A. No, but I believe that they share the same
25 concepts of pressure that police have felt for years under

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1 the same -- using that same term.

2 Q. You gave individuals your contact information
3 with the survey in case they did not understand a question,
4 needed clarification or had any other questions; is that
5 correct?

6 A. Yes.

7 Q. How many people contacted you?

8 MR. SMITH: As follow up for questions or
9 just in general?

10 Q. How many people contacted you as a result of the
11 questionnaire?

12 MR. SMITH: Objection to form.

13 A. John's name was first. So, you'd have to ask him
14 how many people. I was not contacted.

15 Q. So, did you speak to any individuals who had
16 questions about the questionnaire?

17 A. No. And I'm not sure there were any.

18 Q. John never told you about any calls he received
19 as a result of listing his information on the
20 questionnaire?

21 A. The only thing he shared with me is that people
22 wrote to him and said good for you for doing this, that's
23 the only thing I recall.

24 Q. In your 2008 survey you asked for the respondents
25 served on the NYPD after 1994, correct?

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1 A. Yes.

2 Q. Are you aware that the NYPD merged with New York
3 City Transit and New York City Housing in 1994?

4 A. Yes.

5 Q. And are you aware that at the time the New York
6 City Transit Police was the sixth largest police force in
7 the country?

8 A. I didn't know that it was the sixth largest, no.

9 Q. Are you aware that at that time the transit
10 police force had 4500 members?

11 A. I knew -- I pretty well knew that.

12 Q. Do you know whether captains and above who were
13 in the New York City Transit Police force are covered by
14 the current NYPD Captain's Endowment Association?

15 A. Please repeat that.

16 Q. Are you aware of whether captains and above who
17 were in the New York City Transit Police are covered by the
18 NYPD Captain Endowment's Association?

19 A. I believe so. I'm not sure. I believe so.

20 Q. Do you know whether captains and above who were
21 in the New York City Housing police force are covered by
22 the current NYPD Captain's endowment's Association?

23 A. I believe so.

24 Q. Is it possible that individuals who worked for
25 housing or transit had completely different jobs prior to

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1 moving to the NYPD in 1994?

2 A. It's possible.

3 Q. And that the difference in jobs post 1994 merger
4 can explain the difference in pressure?

5 A. Well, I would say anyone before 1994 would have
6 less pressure, whether they were in transit or housing or
7 the NYPD.

8 Q. Why do you say that?

9 A. Because that was -- 1994 was the advent of
10 Compstat.

11 Q. And how do you know that the change in pressure
12 had to do with Compstat for certain individuals and not the
13 change from housing and transit to NYPD?

14 MR. SMITH: Objection to form.

15 A. I know there was -- I know Compstat was -- one of
16 the things that I noted is that Compstat was an excellent
17 way to integrate housing and transit into the police. I
18 don't think the issue is whether or not you prior to '94
19 were in housing or transit. I think the issue is the
20 advent in 1994 when this new system came in when
21 expectations were now created and transited and that
22 pertained to anyone who was in the police department
23 regardless of their previous service.

24 Q. So, you believe no matter what their roles were
25 prior to 1994 every member of the NYPD's pressure increased

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1 in 1994 as a result of Compstat?

2 A. I believe it began to increase in 1994.

3 Q. In your 2008 survey you instructed the
4 respondents to base their answers only on experiences that
5 occurred in 1994 and after; is that right?

6 A. Yes.

7 Q. And your survey was sent 14 years after 1994,
8 right?

9 A. Yes.

10 Q. Do you believe it could be difficult for someone
11 to differentiate between pre and post 1994 a decade and a
12 half later?

13 A. It's always difficult. You have that issue in
14 all survey research. They call that in the literature
15 telescoping, you want them to focus on the most recent, we
16 ask them to, but that's an issue you inherit in these kind1
17 of surveys. So I'm not suggesting that we're immune to the
18 limitations of all survey research. Any survey, any survey
19 has limitations. And you try to do the best you can,
20 acknowledge the limitations and move on and try to do other
21 surveys that may or may not confirm what you've done.

22 Q. So, would you agree that it is a limitation of
23 your survey that you've asked officers to differentiate
24 between pre and post 1994 a decade and a half later?

25 A. I agree that that's a limitation.

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1 Q. Did you ask the officers in the 2008 survey about
2 the differences between pre and post 1994 NYPD?

3 A. Did we ask them to comment on the differences
4 between pre and post?

5 Q. Yes.

6 A. I don't recall if we did that.

7 Q. Why not?

8 A. Because we were -- you know, a survey, any survey
9 to be worth its salt has to be short. We did a short
10 survey, anonymous survey, brief survey, and there's only so
11 much information you can capture in a survey. So, there
12 are certain questions we did not ask. But we tried to get
13 at that by asking them the issue of the pressures and other
14 items, but you can't capture everything in one survey,
15 that's why surveys are repeated.

16 Q. And when you repeated the survey, did you find
17 out any differences pre and post 1994?

18 A. Well, I think we tried to refine it and as you
19 know in the second survey we broke it up into three periods
20 instead of two periods. And we broke it up into the first
21 pre-Compstat period and then the Compstat period of 2000 --
22 1995 to 2001 and then we introduced -- and then we broke up
23 that into a third category, 2002 to 2012, to capture the
24 administration at that time, that was the introduction of a
25 new administration, that was the Bloomberg/Kelly era, from

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1 2002 to 2012.

2 So, maybe in an awkward way or backward way or
3 roundabout way, I think we did something in the direction
4 that you may be suggesting and that it tried to capture
5 distinctions in different periods.

6 Q. I don't actually believe that answered the
7 question which is, whether the 2012 survey corrected the
8 limitation in the 2008 survey about determining what
9 differences existed pre-1994 and post 1994 in the NYPD.

10 A. Well, then I guess I have to disagree with you
11 because we broke it down into three periods and we asked
12 them their experience, you know, to address those three
13 periods. So, I don't know what else to say.

14 Q. And what did that qualitatively tell you about
15 the differences pre-1994 and post?

16 A. It told us that in the -- what the data told us
17 that if you look at -- there's -- it increased in the post
18 era up until 2001, but not to the extent that it increased
19 in the 2002 to 2012.

20 Q. Yet again you're talking about 2002 to 2012 and
21 I'm asking you about 1994.

22 A. It showed that 1994 to 2001 was higher than --
23 no, not all the areas, in some areas, than up until 1994.

24 Q. Are all retired members of the service over the
25 rank of captain members of the CEA?

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1 A. No.

2 Q. How many are not?

3 A. Chiefs are not members.

4 Q. Aside from chiefs, are all members of the service
5 over the rank of captain members of the CEA?

6 A. Those who join the CEA, anyone who is above the
7 rank of captain is eligible to be a member of the CEA
8 except the chief.

9 Q. So, retired members of the service who achieved
10 the rank of captain, are they automatically members of the
11 CEA post retirement?

12 A. No, they have to join it.

13 Q. And do they have to pay dues each year?

14 A. I don't know.

15 Q. Do you know whether the retirees that you
16 surveyed were dues paying members of the CEA?

17 A. I don't know.

18 Q. Do you think that was important information to
19 know?

20 A. There may be, I can't think of a reason.

21 Q. Do you believe there's any difference in retirees
22 who pay dues and choose to be affiliated with an endowment
23 association compared to those who choose not to?

24 MR. SMITH: Objection to form.

25 THE WITNESS: Do I answer that?

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1 MR. SMITH: Yes.

2 A. My supposition is that those who choose to join
3 any union or affiliation after they retire would be more
4 inclined to be associated and have an affinity for the
5 organization that they left.

6 Q. On what do you base that opinion?

7 A. Well, the lawyers who go to join law groups after
8 they leave. I know in my circle not everyone has joined
9 the -- I'm a professor of emeritus, retirees, I know the
10 ones who join, the retirees, are those who have a stronger
11 connection to the institution.

12 And, generally, if you don't have a -- like
13 people who belong to alumni associations or invited or
14 involved in an alumni association, they generally have a
15 stronger connection, they feel a stronger connection to the
16 institution that they left.

17 So they're more inclined to join organizations
18 where they'll find other people of the same ilk and people
19 that have something in common with them.

20 Q. But unions are different than alumni groups and
21 groups of emeritus professors, correct?

22 A. They are different and the same.

23 Q. Well, unions actually can change pension
24 benefits, health and medical benefits for the retirees of
25 that union, correct?

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1 A. I don't know. I don't know if retiree benefits
2 could be changed, I don't know.

3 Q. Well, unions lobby on behalf of their members
4 including the retired members to get them the best benefits
5 available, correct?

6 A. Right, but I don't know if they change the
7 benefits of those who are already retired, I'm not aware of
8 that. They may change the benefits of those who are going
9 to retire. I'm not aware of that they can change the
10 benefits of those who are already retired. Maybe if you're
11 in Detroit, but I'm not aware that that's the case.

12 Q. You are not aware of New York State law regarding
13 unions and retirees?

14 A. That's correct.

15 Q. Do either of your surveys identify whether a
16 respondent had ever held a position of commanding officer?

17 A. Yes.

18 Q. Which one?

19 A. The second one.

20 Q. And why did you include that question in the
21 second one?

22 A. Because we were criticized by the police
23 department on the first one.

24 Q. And did you analyze those responses?

25 A. I don't recall. I think we didn't do it for

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1 this. We will be working on it.

2 Q. Have you done analysis of the question regarding
3 whether a respondent was commanding officer to date?

4 A. No, that's on our agenda.

5 Q. Do your surveys identify whether a respondent had
6 ever attended a Compstat meeting?

7 A. I don't think so. I would have to look at the
8 survey, if you permit me. Would you permit me?

9 Q. Yes.

10 MS. PUBLICKER METTHAM: Actually, you know,
11 I have as a previous deposition exhibit from
12 Dr. Eterno, Exhibits C and D from the Eterno
13 deposition I'm handing to the witness.

14 A. Number 17, were you ever the commanding officer
15 of a precinct.

16 Q. And my question to you was not that.

17 A. I'm sorry. I misunderstood your question.

18 Q. My question to you was whether either of your
19 surveys identified whether respondents had ever attended a
20 Compstat meeting?

21 A. Well, my answer to that is if you were a
22 commanding officer of a precinct you attended a Compstat
23 meeting by definition.

24 Q. That's your assumption?

25 A. Well, it's an assumption I'll be willing to

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1 defend in court.

2 Q. Are you aware of all the different bureaus within
3 the NYPD?

4 A. Yes.

5 Q. Are you aware of bureaus that don't have law
6 enforcement functions?

7 A. Yes.

8 Q. And are you aware that each one of those bureaus
9 and commands within those bureaus have commanding officers?

10 A. Yes.

11 Q. And it's your understanding that every single
12 commanding officer attends Compstat?

13 MR. SMITH: Objection to form.

14 A. No, that's not what I said.

15 Q. What did you say?

16 A. I said every commanding officer of a precinct.

17 Q. Okay. That's the clarification, is that you're
18 talking about precinct?

19 A. Well, I pointed to number 17.

20 Q. But my question to you was whether the survey
21 asked whether they'd ever attended Compstat?

22 MR. SMITH: The survey speaks for itself.

23 Q. You can answer the question.

24 A. I'm not trying to be difficult. What I'm trying
25 to say is, if you're a commanding officer of a precinct and

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1 then you have by definition attended a Compstat meeting.

2 Q. That's your assumption?

3 A. Well, you can call it an assumption.

4 Q. Do you know that for a fact?

5 A. If there is a commanding officer who never
6 attended a Compstat meeting, I would say he was -- he or
7 she was there for a very short time or was sick a lot.

8 Q. And does your survey ask that question?

9 A. No.

10 MR. SMITH: Which one? Short time or sick a
11 lot?

12 MS. PUBLICKER METTHAM: He answered the
13 question.

14 Q. To how many individuals was the 2012 survey sent?

15 A. It was over 4,000, something like that. I could
16 look it up. It was something like 4,197. I can't remember
17 the exact number. I have it, if you want.

18 Q. Yes, please.

19 A. I don't have it with me. It was over 4,000.

20 Q. And what percentage of the entire population of
21 retired NYPD officers is reflected by that number to whom
22 the surveys were sent?

23 MR. SMITH: You want to rephrase that.

24 MS. PUBLICKER METTHAM: No.

25 MR. SMITH: Objection to form.

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1 A. I don't know.

2 Q. Do you know how many retired members of the
3 service there are?

4 A. There is a lot. I don't know the total number,
5 30, 40, I don't know what it is.

6 Q. Did you ever seek the number of retired NYPD
7 officers in 2008 or 2012?

8 A. Not personally.

9 Q. Do you know what the breakdown in rank of the
10 respondents to your 2012 survey was?

11 A. I don't have it memorized.

12 Q. Do you know whether the breakdown in rank of the
13 respondents to your 2012 survey matches the breakdown of
14 ranks of retired NYPD officers for that same time period?

15 A. It's not precise.

16 Q. And how do you know that?

17 A. Because I heard it somewhere, but I forget where.

18 Q. Does it matter to you that it was not precise?

19 A. Well, does it matter? You always want to do the
20 best you can. We didn't have access to the official data.
21 So, the way we proceeded was to do it the best way we
22 could.

23 Now, we knew that there were certain limitations
24 that's why we did a second study which was even larger,
25 over 4,000, we had, by the way, a 48 percent response rate,

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1 48.2 which is exceedingly large by survey research
2 standards. And we did the best we could. Obviously there
3 are limitations, but the interesting thing is there's
4 limitations on every survey even nationally-known surveys
5 that are widely applauded. I can give you an example if
6 you'd like.

7 Q. Sure.

8 A. The Gallup Pole, which is a nationally recognized
9 survey on political issues, surveys about a thousand
10 people, a thousand to 1500 by phone calls, by the way.
11 15 percent of the phone calls are on cell phones. But the
12 population in America that solely relies on cell phones is
13 about 38 percent. So just by that definition it's
14 distorted.

15 There are many -- even the well-respected
16 national crime victim services crime survey that's done by
17 the Bureau of Justice statistics does about 40,000
18 households, about 70,000 people, excludes the military
19 personnel, it excludes people in correctional institutions,
20 and others.

21 So, all I'm suggesting to you is that there are
22 weaknesses in all surveys and the fact that our two surveys
23 generally paralleled one another is an example of what they
24 call and classify in its research triangulation, where you
25 try to get at the same phenomena for different ways.

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1 Q. The Gallup Pole is a random pole, correct?

2 A. That's correct.

3 Q. Your survey is not?

4 A. That's right.

5 Q. Is the National --

6 A. But it's a --

7 Q. If you will let me finish my question.

8 A. I'm sorry.

9 Q. Is the NCVS survey a random survey?

10 A. Yes.

11 Q. Did you differentiate in your survey between
12 members assigned to the different bureaus?

13 A. No.

14 Q. Do you believe that officers in different bureaus
15 and assignments have the same pressure?

16 A. No, it depends on your position.

17 Q. So, is it possible that many of the individuals
18 who marked high pressure were in the same bureau?

19 A. Well, most of them were -- I don't know, when
20 you're saying bureau, like in transit bureau; is that an
21 example of what you would say?

22 Q. Are you familiar with the bureaus within the
23 NYPD?

24 A. Yeah. So, I don't know the answer to that
25 question.

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1 Q. Are you familiar with traffic stat?

2 A. Yes.

3 Q. And are you aware that those assigned to the
4 transit bureau attend traffic stat?

5 A. Yes.

6 Q. Is it possible that responses in many instances
7 are based on pressure from traffic stat and not based on
8 Compstat?

9 A. In my lingo, traffic stat is an offshoot of
10 Compstat. Traffic stat, Narc stat, they all evolve from
11 Compstat, they're offspring. So if you want to make that
12 distinction, fine, but I would offer -- there's a --
13 they're generically the same and that's all I would say.

14 Q. Are traffic stat, Narc stat and Compstat all led
15 by the same members of the service?

16 A. Not usually.

17 Q. Do you believe that pressure is the same at Narc
18 stat, traffic stat and Compstat?

19 MR. SMITH: Objection to form.

20 A. It can be the same.

21 Q. It can also be different, correct?

22 A. It depends on the time, it depends on the people.

23 Q. You understand that certain precincts in the NYPD
24 have higher crime than others?

25 A. Yes.

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1 Q. And you understand that certain precincts in the
2 NYPD have more civilian complaints and radio runs, correct?

3 A. Yes.

4 Q. And do you believe that precincts with higher
5 crime, higher radio runs may have greater pressures on
6 those officers than officers assigned to precincts with few
7 crimes and few radio runs?

8 MR. SMITH: Objection to form.

9 A. Yes.

10 Q. And your survey has no questions that would get
11 to these differences in pressure, correct?

12 A. No, that would be another survey.

13 Q. Have you done that survey?

14 A. No, but it would be -- it's an interesting
15 survey, I may take you up on that.

16 Q. Did you analyze the narrative responses provided
17 with the surveys?

18 A. Yeah, a long time ago, I did.

19 Q. Did you notice complaints about the Compstat
20 meetings were based on complaints of ridicule and
21 embarrassment?

22 A. There were some.

23 Q. Did you see any narrative responses that stated
24 that certain questions could not be accurately answered as
25 written?

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1 A. You mean questions in our survey?

2 Q. Yes.

3 A. No, I didn't see that.

4 Q. Did you see narrative responses from individuals
5 who explicitly stated that their ratings were based on what
6 they heard at CEA meetings and from individuals currently
7 not on the force?

8 A. No.

9 Q. Turn to page 24. You claim that the
10 centralization of decision-making and reduction of lower
11 level flexibility, autonomy and discretion parallels a
12 national study of U.S. police departments not including the
13 NYPD which have adapted the Compstat system.

14 A. Yes.

15 Q. And in coming to that conclusion you cited a
16 study from 2001?

17 A. As I said before, that's a study in 2001, but
18 that study has been updated later.

19 Q. But you didn't cite to the updated study,
20 correct?

21 A. No.

22 Q. Why not?

23 A. It's just an oversight.

24 Q. And when was the new study released?

25 A. Oh, I would say two, three years ago.

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1 Q. Did you rely on the updated study in coming to
2 the conclusions in your report?

3 A. I'm aware of the updated study, I didn't look at
4 it.

5 Q. So, you relied on the 2001 study for this expert
6 report; is that correct?

7 MR. SMITH: Objection to form.

8 A. Both studies say essentially the same thing, so I
9 can't tell you what I relied on. I just probably had that
10 reference more handy.

11 Q. What are the differences in the two studies?

12 A. The latest studies refine it more. They look at
13 -- they look at some additional cities. They -- I can't
14 tell you which ones, they also talk about the diminution
15 of problem solving in those cities and they talk about the
16 diminution of officer discretion in those cities.

17 Q. Did the updated study include the NYPD?

18 A. No.

19 Q. In this section you claim that the massive
20 deployment to address quality of life crimes became favored
21 over more surgical strikes; is that right?

22 A. Yes.

23 Q. On what do you base that opinion?

24 A. I'm talking about the -- well, one would be an
25 example of the impact program, where you bring a lot of

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1 rookie cops from outside a particular area and you place
2 them in an area where it's a very different area from where
3 they're used to from where they came with limited
4 supervision and it's a massive deployment of rookie cops
5 that are -- and where they go is determined from
6 headquarters.

7 Q. Are you referring to operation impact --

8 A. Yes.

9 Q. -- or impact overtime?

10 A. I don't know -- I don't know the difference. I
11 mean, there is operation impact and they get overtime. I'm
12 really referring to operation impact.

13 Q. So, by operation impact you're referring to,
14 quote, unquote, rookie officers out of the police academy?

15 A. Yes, ma'am.

16 Q. And it's your understanding that the purpose of
17 impact is to place officers in a precinct that they're not
18 comfortable with or not familiar with?

19 A. No, that's putting words in my mouth.

20 Q. I'm sorry, I misunderstood what you said then.

21 A. I said the purpose -- I said often they are
22 placed in areas they are not familiar with, they may come
23 from the suburbs, they may come from other areas, but they
24 are assigned to high crime areas, as you know and with
25 little tutelage right out of the academy and often are

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1 asked to get X number of collars or summons or arrests with
2 little supervision of a supervisor.

3 Q. Regardless of the operation impact officers who
4 live in the suburbs may be assigned to a precinct in the
5 city, correct?

6 A. Oh, sure.

7 Q. And the impact program, as you referred to it, or
8 operation impact, are you aware of what the officer to
9 supervisor ratio is?

10 A. I've heard four to one, something like that.
11 I've also heard that that's the official and I've heard
12 that's not reality.

13 Q. What have you heard the reality is?

14 A. I've heard it's much higher.

15 Q. Like what?

16 A. Ten, twelve, fifteen to one, sometimes very
17 little, occasionally.

18 Q. And from whom have you heard this?

19 A. From people who have worked in that.

20 Q. And you won't tell me any of those names?

21 A. Of course not, I can't divulge that.

22 Q. Are you aware that the ratio of supervisors to
23 officers in operation impact is significantly greater than
24 the ratio of supervisors to officers in regular patrol?

25 A. If you're telling me what the official is, I

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1 would have to accept it.

2 Q. What is your understanding of what the supervisor
3 to officer ratio is in regular patrol?

4 A. I don't know the official number.

5 Q. Do you know what the unofficial number is?

6 A. A lot of it -- it depends on how many supervisors
7 are available. I find, frankly, the numbers are totally
8 irrelevant because I've looked at numbers in the police
9 department, I remember looking -- there's an official tally
10 of how many community policing officers there are in each
11 precinct, and they will tell you, but you go out in the
12 precinct, which I have, and there aren't those numbers.

13 So, frankly, I don't have much confidence in the
14 numbers. And apparently the new police commissioner
15 doesn't either, because he spoke to the same point that I
16 just made.

17 Q. What point is that?

18 A. That recently before the city council he said
19 that there were too many rookie cops in impact zones
20 without sufficient supervision.

21 Q. Do you know how large impact zones are?

22 A. No.

23 Q. Are you aware that many impact zones are just a
24 couple of blocks?

25 A. Yes.

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1 Q. And you don't believe that flooding areas that
2 are only a couple of blocks in size would be a surgical
3 strike?

4 A. Not if you -- in my definition, not if they're
5 instructed to get their numbers.

6 Q. You also claim that inadequate evaluation and
7 tactical intensification has been accompanied by increased
8 centralization; is that right?

9 A. Yes.

10 Q. What do you mean by inadequate evaluation?

11 A. There's a concept in organizations called double
12 loop learning. Where you examine your premises and what
13 you've done. And this was done in the early years of
14 Compstat. And things were evaluated to see whether or not
15 it's worked and you would evaluate in terms of how
16 resources are allocated to various units.

17 So, for example, the program that I referred to
18 earlier, the Satcom program that was introduced in 1996
19 that I spoke to earlier, was disbanded -- it was a radical
20 relearning process and it was disbanded in 2004/2005 by the
21 commissioner, and it was based on what I would consider
22 inadequate evaluation.

23 Q. So, when you refer to inadequate evaluation, are
24 you referring to evaluation of policies and practices or
25 are you referring to the evaluation of individual officers?

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1 A. I'm not talking about individual officers. I'm
2 talking about the former.

3 Q. So, when you say inadequate evaluation, you mean
4 inadequate evaluation of departmental policies and
5 practices?

6 A. That's correct.

7 Q. What do you mean by tactical intensification?

8 A. Well, I think operation impact would be one
9 example. It started off small in a few areas, and the
10 enlargement of the street crime unit would be another
11 example when it was tripled in size. When the head of the
12 agency was against the tripling of the size of the street
13 crime unit because these people at that time were very
14 carefully selected and screened, but whenever you hire
15 people in a rushed fashion, certain people are going to
16 creep into that and wouldn't be the right people for those
17 positions.

18 Q. How many Compstat meetings have you attended?

19 A. I never counted. I would say well over a
20 hundred.

21 Q. Are those all within the NYPD?

22 A. Yeah, within the hundred I attended, yeah, NYPD.

23 Q. And what years did you attend those 100 Compstat
24 meetings?

25 A. What periods, year periods?

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1 Q. What years?

2 A. I started in 1994 and I think the last one was
3 2007, or 2008.

4 Q. Did you attend the Compstat meetings regularly?

5 A. At one period I did.

6 Q. When did you attend the Compstat meetings
7 regularly?

8 A. In the early years.

9 Q. So, from 1994 until when?

10 A. When you say regularly, you're not meaning every
11 meeting, are you?

12 Q. No.

13 A. Okay. I would say from 1994 to around regularly
14 until around 2000, 2001.

15 Q. How many Compstat meetings did you attend after
16 2001?

17 A. Maybe six. I'm guessing.

18 Q. Do you recall which boroughs were presenting in
19 the six Compstat meetings you attended after 2001?

20 A. No.

21 Q. Do you recall any of the individuals presenting
22 at Compstat?

23 A. Do I recall their names?

24 Q. Yes.

25 A. No.

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1 Q. Do you recall any of the chiefs who were present?

2 MR. SMITH: At six, approximately, after
3 '01?

4 MS. PUBLICKER METTHAM: Yes.

5 A. I'd have to look whoever was chief at that time.
6 Well, there was Chief Esposito.

7 MR. SMITH: She is requesting what your
8 recollection is not --

9 MS. PUBLICKER METTHAM: He just testified as
10 to what he recalled, Mr. Smith. Please don't
11 interrupt him.

12 MR. SMITH: No, he didn't.

13 MS. PUBLICKER METTHAM: He just said I
14 recall Chief Esposito.

15 MR. SMITH: I should have cautioned you that
16 you can draw inferences --

17 MS. PUBLICKER METTHAM: Mr. Smith, stop
18 coaching the witness in the middle of a question.

19 MR. SMITH: You can draw all the inferences
20 you want, but if she's asking you for a
21 recollection, that's a very different thing.
22 Okay?

23 MS. PUBLICKER METTHAM: Mr. Smith, he was in
24 the middle of a question. He just testified to a
25 specific recollection and you interrupted and

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1 coached the witness. I'm going to ask you again
2 not to do so.

3 Please mark that for a ruling.

4 MR. SMITH: I didn't coach the witness. I
5 didn't coach the witness. I actually just gave
6 him some pretty standard advice which was to
7 make sure that he understood the difference
8 between drawing an inference and responding to a
9 question which called for what his recollection
10 was.

11 Q. Could you, please, finish answering your
12 question.

13 A. Can I ask you to repeat it.

14 Q. Yes. The question was, which chiefs were present
15 at the Compstats that you attended after 2001?

16 A. I recall Chief Esposito.

17 Q. Do you recall anyone else?

18 A. I don't recall their names.

19 Q. And what do you recall about those Compstat
20 meetings after 2001?

21 A. They seemed like typical Compstat meetings.
22 Sometimes it was adversarial, sometimes it was collegial.

23 My observation is that over the years that a lot
24 of the meaning takes on the tone -- is guide by the tone of
25 whoever the inquisitors are.

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1 Q. Did you notice differences in the Compstat
2 meetings pre-2001 and post?

3 A. I can't make that yearly description. I can only
4 answer your question by saying did I notice differences in
5 Compstat meetings based on who were the chief inquisitors,
6 and you can figure out the years, if you would, but that's
7 the only way I could respond to that.

8 Q. But you asked your survey respondents to answer
9 with a year and that year was 2001, correct?

10 A. I'm sorry?

11 Q. When you asked your survey respondents to respond
12 about pressures they experienced, you gave them a specific
13 year, correct?

14 A. Yeah.

15 Q. And one of those years was 2001?

16 A. Yeah -- no, we said within a period. We said
17 within a period.

18 Q. Within a period?

19 A. Yeah.

20 Q. So, I'm asking you, prior to 2001 and after 2001,
21 did you experience differences?

22 A. I experienced differences not based on years. I
23 experienced differences based on who was asking the
24 questions. So, if you -- if we could identify who was
25 asking the question in what year then I could --

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1 Q. So, if you were to take your own survey, and you
2 were asked about the pressure from Compstat from 1994 to
3 2000, what number would you rank it?

4 A. It wasn't pressure on me.

5 Q. What pressure did you observe at the Compstat
6 meeting?

7 A. I don't feel that's a fair question to ask,
8 because pressure is something someone feels. I can't tell
9 you what someone felt. I can only tell you stories that
10 people tell me, but I can't tell you Mr. Joe Blow felt
11 eight pressure and Joe Smith -- I could surmise, maybe, but
12 I can't tell you what so-and-so felt at a particular
13 meeting.

14 Q. You did testify earlier that you believe all
15 officers felt greater pressure after 1994, correct?

16 A. Yes.

17 Q. So, you can, in fact, talk about pressures on
18 individual officers, right?

19 MR. SMITH: Objection to the argumentative
20 question.

21 A. I don't follow that.

22 Q. So, you can't tell me based on the year 2001 pre
23 or post whether you saw chiefs exerting greater pressure at
24 Compstat; is that correct?

25 A. That's not the question I heard you ask. The

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1 question I heard you ask is whether they felt pressure.

2 Q. I did not ask about whether anybody felt
3 pressure.

4 A. Then I misheard.

5 Q. Did you observe greater pressure prior to 2000 or
6 after 2000 at Compstat meetings?

7 A. In some cases -- I was only in a few meetings
8 after 2002, as I testified to you. So, it's very hard for
9 me to generalize on that.

10 Q. So, you can't generalize?

11 A. I can't generalize on a few meetings. I can only
12 generalize on who I saw asking questions.

13 Q. And what were the differences you saw based on
14 who was asking the questions at these Compstat meetings?

15 A. Well, I saw when Police Commissioner McCarthy was
16 there, I saw -- when he was one of the inquisitors I saw
17 high pressure. Which subsequent stories have indicated in
18 reports in Chicago where he is now the head of police
19 department suggesting that that's carried over. So I saw
20 that.

21 Q. And how was that greater pressure observed by you
22 at the Compstat meeting?

23 A. I would say tone of voice, the degree of
24 civility. The way someone was treated, the respect
25 accorded someone. How you say it, what you want done.

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1 Q. Earlier I asked if you recalled the chiefs who
2 were present at the Compstat meetings you attended and you
3 stated you only recalled Chief Esposito; is that correct?

4 A. I thought you said only in the last period.

5 Q. So, Chief McCarthy you're referring to in the
6 pre-2001 period?

7 A. I guess he -- when did he leave the department?
8 I think he was there the same -- he overlapped with
9 Esposito. I recall previous chiefs, if that's what you're
10 asking me.

11 Q. When did you observe Compstats in which Chief
12 McCarthy was present?

13 A. He wasn't chief, he was a deputy -- he was the
14 head of policy or something. I don't remember the year.

15 Q. Was it pre or post 2001?

16 A. I don't remember the year he left. He went first
17 to Newark as chief of the department, so I don't remember.

18 Q. So, a decade and a half later you're finding it
19 difficult to recall specifics of Compstat meetings you
20 attended?

21 MR. SMITH: Objection to form.

22 A. I can recall what I observed. I would have to
23 look at when I actually -- I wasn't a regular participant.
24 I wasn't a recipient of pressure. To think to equate me
25 with someone who regularly -- and which it sounds to me

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1 what you're doing, is equating me with a participant who
2 has to go up every time that precinct is being called up in
3 terms of a Compstat meeting and then have to come up with a
4 plan is, I think, apples and oranges. I don't think I'm in
5 the same boat that they are and they would say to me, you
6 know, we have to come here, why do you come here, you don't
7 have to come here.

8 Q. Why did you go to the Compstat meetings?

9 A. Because I was studying it.

10 Q. So, the purpose of going there was to study these
11 Compstat meetings?

12 A. Yes, because I was writing a book on it.

13 Q. So, your stated purpose was to learn about the
14 Compstat process?

15 A. Yes.

16 Q. Do you know if anyone at Schoolcraft's apartment
17 on October 31, 2009 knew that he had reported misconduct?

18 A. I'm sorry, anyone at his -- I'm sorry.

19 Q. Do you know whether anyone who appeared at
20 Schoolcraft's apartment on October 31, 2009 knew that he
21 had reported misconduct?

22 MR. SMITH: Objection to form.

23 A. I don't know. I'm assuming people knew, I'm
24 assuming the precinct commander would have known that, but
25 I don't know that for a fact.

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1 Q. On what do you base that assumption?

2 A. I'm assuming that this was known at the time, but
3 I'm willing to withdraw it, I don't know it for a fact.

4 Q. And what do you base the assumption that people
5 knew?

6 A. Because it's alleged that Quality Assurance
7 called the precinct and the precinct knew that he had gone
8 to Quality Assurance because they asked for him, that's my
9 assumption.

10 Q. Are you aware that Adrian Schoolcraft was the
11 telephone switchboard operator and answered all calls at
12 the precinct?

13 MR. SMITH: Objection to the form.

14 A. No.

15 Q. On what do you base the opinion that you just
16 stated, that Quality Assurance division called the precinct
17 and that the precinct knew?

18 A. I think it was in one of the tapes or -- I think
19 it was in one of the tapes.

20 Q. And when you say one of the tapes, do you mean
21 one of the tapes that was recorded and sent to the Village
22 Voice and Brian Lehrer Show?

23 A. I'm not -- I'm not relating to the Brian Lehrer
24 Show, but --

25 Q. I'm sorry, I meant, this American Life Show.

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1 A. Okay. I don't remember which one. I thought I
2 heard it.

3 Q. So, you thought you heard it and it would have
4 been on one of those two --

5 A. Yes.

6 Q. -- sets of recordings?

7 A. That's correct.

8 Q. In your report claims that Schoolcraft is not an
9 EDP, but an honest, hardworking police officer trying to
10 expose misconduct; is that right?

11 A. Uh-huh.

12 Q. Is that a yes?

13 A. Yes. That's a yes.

14 Q. How do you know that he's honest?

15 A. Professor Eterno assessed that whole situation
16 and I have to defer to his judgment.

17 Q. So, you have not made an assessment over whether
18 Adrian Schoolcraft is an honest, hardworking police
19 officer?

20 A. I don't have information one way or the other.
21 I'm not commenting on his personality or his conduct.
22 That's not -- I don't envision that as my role.

23 Q. So, that section of the report was written by
24 Dr. Eterno?

25 A. That sentence.

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1 MS. PUBLICKER METTHAM: Let's take a quick
2 break. It's 5:38.

3 (Whereupon, a brief recess was taken.)

4 MS. PUBLICKER METTHAM: We're back on at
5 5:46, and I have no further questions.

6 EXAMINATION BY

7 MR. KRETZ:

8 Q. So, we've met, and you know I represent Deputy
9 Inspector Steven Mauriello?

10 A. Yes.

11 Q. And I have some follow-up questions for you.

12 A. Sure.

13 Q. I'll try to get through them quickly. So, let me
14 start here.

15 Your report that you did with Dr. Eterno
16 addresses the decision to declare Adrian Schoolcraft an EDP
17 on October 31, 2009; is that right?

18 A. Correct.

19 Q. And you indicated that that portion of the report
20 was originally drafted by Mr. Eterno; is that correct?

21 A. That's correct.

22 Q. Did you review that portion of the report after
23 he drafted it?

24 A. We review everything that the other person
25 writes.

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1 Q. Okay. And do you believe you understood what was
2 written there?

3 A. I understood what he said.

4 Q. And the final version of it you understood?

5 A. Yes.

6 Q. And you agreed with it?

7 A. As I said before, I agree because I don't have
8 confidence in this area and that he does and I have
9 confidence in his assessment.

10 Q. What I want to know is whether your report draws
11 the collusion, that the representatives of the NYPD did not
12 adequately indicate the basis for declaring Schoolcraft an
13 EDP on October 31st?

14 A. Can you show it to me.

15 Q. You're welcome to look at it.

16 MR. SMITH: Are you talking about the
17 report; you want to show him the report?

18 MR. KRETZ: Yes, Exhibit A.

19 Q. Page 9, I think, is where that subject is
20 discussed.

21 A. Okay. So, where are you on page 9?

22 Q. Well, I really want to know your understanding,
23 so you can look anywhere throughout that section. I want
24 to know, does the report conclude, is the opinion expressed
25 that NYPD did not properly explain in any documentation

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1 what the basis was for declaring Schoolcraft an EDP?

2 MR. SMITH: Objection to form.

3 A. That's how I read this document.

4 Q. Does the report express a view on whether or not
5 Schoolcraft was an EDP on October 31, 2009?

6 A. I think the report suggests that there was no
7 basis for labeling him an EDP, that's how I read this
8 report.

9 Q. And you can understand how I'd like to make sure
10 we all understand just what that means, right?

11 So, do you mean to say, based upon your or
12 Dr. Eterno's independent review and analysis of all
13 relevant information that you drew the conclusion together
14 that Schoolcraft was not an EDP on October 31, 2009 --

15 MR. SMITH: Objection to form.

16 Q. -- or alternatively did you just decide there was
17 inadequate information recorded on whether or not he was?

18 A. I think the answer to your question, I'm trying
19 to be responsive, I think the answer is based on the
20 information that Dr. Eterno had coupled with his experience
21 in the police department led him to the conclusion that
22 there was not a reason to declare him an EDP.

23 Q. So, the information relied upon Dr. Eterno to
24 draw that conclusion?

25 A. Yes, based on the information that he had access

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1 to.

2 Q. And that's what's listed on Appendix B?

3 A. That's correct.

4 Q. And nothing else?

5 A. That's correct.

6 Q. Did either of you --

7 A. Oh, based on his reading -- I'm sorry. Based on
8 his reading of the patrolman's guide and his experience
9 teaching EDPs.

10 Q. Understood. As to what's required in order to
11 declare someone an EDP?

12 A. Yes.

13 Q. Did either of you ask for additional
14 documentation of anything relating to this case in order to
15 better inform that decision and any others you expressed in
16 your report?

17 A. You know, it's hard to ask for information that
18 you don't know exists.

19 Q. Did it occur to you that there might other
20 information that exists?

21 A. We asked for any information that was relevant to
22 preparing this report, that's all we could do. And it's
23 hard to request information, I don't know who was deposed.
24 I'm just brought in for one small part. So, we don't have
25 access to the entire case. So I'm assuming that -- I

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1 assumed if you've had all these depositions they must be
2 voluminous, I'm assuming that. So we don't have access to
3 that. We never had access to it, so we used the material
4 that was available to us.

5 Q. Upon receiving the information that was available
6 to you, did it occur to you that there is other information
7 as well based upon what you read?

8 A. No.

9 Q. So, you didn't think there were any other --

10 A. I didn't know if there were others, I didn't know
11 who was deposed.

12 Q. Did you ask?

13 A. I asked for all relevant information that there
14 was, I don't know how else to ask. I know I've asked -- I
15 did ask, for example, when we prepared our report, we were
16 told by the plaintiff's attorney --

17 MR. SMITH: Let's try and avoid waiving any
18 privileges here.

19 THE WITNESS: Okay.

20 MR. SMITH: Can I find out what he was about
21 to say and if it's not privileged --

22 MR. KRETZ: Sure.

23 (Whereupon, an off-the-record
24 discussion was held.)

25 MR. SMITH: You can continue with your

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1 answer.

2 A. What I was going to say is that one thing I was
3 made aware of, that's not here, was that the city was going
4 to have an expert report in response to our expert report
5 on August 18th. August 18th came and left and we never had
6 it and I asked for it because that would have been helpful
7 in our preparation.

8 So, if you're asking me if the track record of
9 trying to get information, it wasn't really that great, but
10 I didn't know of any other information.

11 Q. Not even based upon the review of materials that
12 were provided to you?

13 A. That's right.

14 Q. It didn't occur there was anything else to
15 review?

16 A. No, because I didn't know how far the case was
17 along, I didn't know anything about how far the case was
18 along. I didn't know who had been deposed, who hasn't been
19 deposed. So, I don't have that information.

20 Q. Did you have anything else to say on that
21 subject?

22 A. No.

23 Q. You refer in your report to your research.

24 A. Yes.

25 Q. And I just want to make sure I understand. First

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1 of all, you didn't do any independent research for purposes
2 of preparing this report, right, any new independent
3 research?

4 A. That's correct.

5 Q. And you relied upon what you call your research
6 which was your 2008 and 2012 surveys; is that right?

7 A. Correct.

8 Q. I think you said a good deal of misclassification
9 of crime in your opinion is due to Compstat, right? Not
10 all, but a good deal of it?

11 A. Yes.

12 Q. What are the other reasons for misclassification
13 of crime that aren't due to what you believe is the
14 pressure of Compstat?

15 A. Well, there are honest errors, there are
16 inadvertent errors. There's typographical errors. There
17 are individual predilections of individual officers who
18 might want to do it on their own to look good. So, there
19 are other factors. There have always been other factors,
20 we never denied that. There have been factors in virtually
21 every police department.

22 So, we're not -- to repeat, we're not maintaining
23 that it's solely due to Compstat, we're saying that this
24 numerical number system is emblematic of what police and
25 social scientists have documented for decades and that is

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1 the more any management system relies primarily on numbers,
2 the more susceptible it is -- and this is quoting Donald
3 Campbell, a very famous social psychologist who worked in
4 this area, the more it's susceptible to manipulation and
5 the more likely it will corrupt the very process it's
6 intended to measure. So we offer this as within that
7 framework.

8 MR. KRETZ: Off the record.

9 (Whereupon, an off-the-record
10 discussion was held.)

11 Q. You indicated in your testimony, Doctor, that you
12 did not define pressure in your survey or in your report
13 because it is so well-known what it means that there was no
14 need for you to do so.

15 Can you tell me, then, what is this well-known
16 definition of pressure?

17 A. Well, now you're forcing me into my professorial
18 role.

19 Q. Go ahead.

20 A. Okay, I can't respond to your question without
21 doing that. So, is that okay?

22 Q. If you can give me your definition of pressure
23 that you believe everybody fully understands without having
24 to be told whether there is one when answering your survey,
25 yes. What is that?

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1 MR. SMITH: I'm going to object to the form
2 of this question. Can you get a question that he
3 can answer now.

4 MR. KRETZ: I asked him what is the
5 well-known definition of pressure that he said
6 everyone would understand when reading his survey
7 that, therefore, there was no need for him to
8 state what it is.

9 Q. What is that definition?

10 MR. SMITH: Okay. Can you answer that
11 question?

12 A. An obligation to meet -- this is my definition.
13 An obligation to meet expectations that are thrust from
14 above and at the risk of being penalized if you don't meet
15 those expectations.

16 Q. So, there is nothing indicated in that definition
17 that says that pressure is an invitation to break the rules
18 in order to satisfy whatever that numerical expectation
19 might be --

20 A. I would say --

21 Q. -- is that right?

22 A. -- in the definition itself, does it state that
23 one has to break the rules; is that your question?

24 Q. Does the word pressure mean that you're pushing
25 somebody to the point where they have to break the rules to

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1 satisfy what you're pressing them to do?

2 A. I would say it's not in a definition, I would say
3 it creeps into practice in some cases.

4 Q. Well, that's, I guess, what your surveys
5 supposedly are all about; is that right?

6 A. Yes, sir.

7 Q. Tell me, how many surveys have you formulated?

8 A. Personally?

9 Q. Yes.

10 A. I've done a survey of the civilian complaint
11 system. I did a survey of federal prisoners in non-federal
12 institutions. I've done numerous surveys in the United
13 Kingdom when I was attached to the police staff college and
14 surveyed for police departments in terms of citizen
15 satisfactions. So I've done my share of surveys.

16 Q. So, you formulated those surveys?

17 A. Yes, sir.

18 Q. And then you compiled the results?

19 A. Yes.

20 Q. Did you then write reports indicating what the
21 results reveal?

22 A. Yes.

23 Q. And how many occasions have you done that?

24 A. It's hard to -- I have to go back, I've done it
25 for four or five police departments in the UK. I've done

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1 it -- I did a survey with someone else that's in my
2 bibliography on mediation, in my bibliography, in my
3 reference for the -- on the New York City Police Department
4 mediation.

5 I did a survey on federal prisoners in
6 non-federal institutions when I worked in the Department of
7 Justice. I did a survey when I worked for the National
8 Academy of Public Administration when I worked on Federal
9 HUD programs.

10 Q. And in each instance, did you do those on your
11 own?

12 A. Yes, sir.

13 Q. The --

14 A. Oh, wait. I need to correct it. In the UK some
15 of them were done jointly with other -- with UK police.

16 Q. Let me just go back for a second.

17 In talking about Dr. Eterno's opinion as to
18 whether Schoolcraft was an EDP on the night of October 31,
19 2009, did you ever consider whether reasonable people could
20 disagree on whether or not he was an EDP on that occasion?

21 A. I don't know how to answer that question.

22 Q. Well, do you think that he's absolutely right or
23 do you think reasonable people could disagree on that
24 assessment?

25 A. I think that a reasonable person would look at

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1 all the evidence and make a judgment and that's the only
2 way I could answer that.

3 Q. So, if you had all the evidence or Dr. Eterno had
4 all the evidence, do you think he would have an open mind
5 as to that determination?

6 A. Oh, he definitely has an open mind.

7 Q. In the Floyd case you testified as a fact witness
8 regarding responses to the surveys of 2008, 2012, right?

9 A. Yes.

10 Q. And you testified that when conducting a survey
11 one should have in mind what you called a null hypothesis;
12 is that right?

13 A. Yes, sir.

14 Q. What was your null hypothesis for the 2008
15 survey?

16 A. The null hypothesis was there was very little --
17 there was little or no pressure placed on individuals in
18 the police department to manipulate the crime statistics or
19 pressure to increase summons, arrests and stop-and-frisk.

20 Q. By the way, in 2008 and 2009, had you identified
21 what you considered to be a kind of average error rate in
22 the classification of crime by percentage of crime reports?

23 A. Had we looked at crime reports; is that what
24 you're asking?

25 Q. Had you identified what you considered to be an

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1 average rate of error in classifying crime throughout the
2 NYPD in 2008, 2009?

3 A. No.

4 Q. Do you have any view on what such a number might
5 be?

6 A. No.

7 Q. And that's including intentional
8 misclassification of crime or innocent misclassification of
9 crime?

10 A. I can't do that because I don't have access to
11 their information.

12 Q. And you don't have a view whether there is some
13 error rate that you would consider to be a norm that one
14 would have to accept as just the nature of the police
15 practice?

16 MR. SMITH: Objection to form. Asked and
17 answered.

18 A. No.

19 Q. What was your null hypothesis for the 2012
20 survey?

21 A. The same one I gave you for the 2008.

22 Q. Was it your assumption as well as your null
23 hypothesis when you did the survey in 2012?

24 A. No.

25 Q. What was your assumption when you did the 2012

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1 survey?

2 A. No, I had no assumption.

3 Q. In your own mind, did you have an assumption?

4 A. No.

5 Q. Sir, did you give any consideration in preparing
6 each survey to soliciting responses that would distinguish
7 what I'll call constructive pressure from destructive
8 pressure?

9 MR. SMITH: Objection to form.

10 A. We did in the first survey make a distinction
11 between the extent to which they felt pressure for
12 integrity in crime statistics and those that saw that there
13 was manipulation, those who said there was manipulation in
14 crime statistics and we know that there are changes that
15 are perfectly legitimate when you look at crime statistics,
16 we found that of those who acknowledged that they
17 personally experienced this two-thirds said that these
18 changes were moderately unethical and one-third said that
19 they were highly unethical. So, those who experienced it
20 -- I'm not sure I'm responding, I'm trying to respond to
21 your question.

22 Q. Go ahead and we'll see.

23 A. Two-thirds of those who experienced this said
24 that they felt that these changes were not, to your use
25 word, positive, but they were negative, to use your words,

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1 and I'm substituting for your word of negative, ethically
2 inappropriate.

3 Q. So, the question was about whether there was
4 increased pressure?

5 A. Yes.

6 Q. And then you asked them whether they thought that
7 pressure was yielding an ethical or unethical result?

8 A. Low, medium and high.

9 Q. And did you ask any question that indicated what
10 was meant by pressure that yielded an unethical result --

11 A. No.

12 Q. -- or a result that was not ethical?

13 A. No, we left it to them and actually in survey
14 research that's one of the advantages of doing anonymous
15 survey research, that you're not imposing your definition,
16 the person will raise their own definition.

17 Q. Which question makes the reference to ethical
18 results?

19 A. I don't have the survey.

20 Q. Okay. I'll show it to you. This is the 2008
21 survey.

22 MR. SMITH: That's been marked as Exhibit D.
23 This is ES production 42 through 45.

24 A. Question 4.

25 Q. What does it say?

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1 A. Extent to which changes were ethically
2 inappropriate.

3 Q. And what changes are they referring to in that
4 question?

5 A. Changes in the crime reports due to Compstat.

6 Q. And what did you understand the answer to mean,
7 what changes were being imposed that were not ethically
8 appropriate? Do you have any idea?

9 A. I can only go by what people added to some
10 comments.

11 Q. What comments were those?

12 A. Downgrading grand larceny to petty larceny.
13 Changing robbery to lost property. Changing a burglary to
14 criminal trespass.

15 Q. As a result of your survey, do you have any
16 indication as to how many times those kind of things
17 occurred?

18 A. No.

19 Q. Do you have any indication as to whether any of
20 those things occurred in the 81st Precinct?

21 A. No.

22 Q. And that's not revealed to you by either survey,
23 the 2008 or the 2012?

24 A. We didn't focus on precincts.

25 Q. So, that's not revealed to you by either one of

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1 those surveys; is that correct?

2 A. That's correct.

3 Q. Do you recall in the Floyd trial being asked this
4 question and giving this answer and this appears on 2570 of
5 that trial transcript.

6 Question: So, then by far, the largest effect
7 that your survey showed was increased pressure to decrease
8 those serious crimes; isn't that correct?

9 Answer: Yes.

10 A. It's a year ago, so I'm not doubting it, but I
11 don't recall it.

12 Q. And you agree with that answer to that question
13 today?

14 A. The largest pressure was on to decrease index
15 crime? Is that --

16 Q. That's a fair --

17 A. Is that what --

18 Q. Yes, to decrease serious crimes.

19 MR. SMITH: Serious or index?

20 MR. KRETZ: Serious crimes.

21 MR. SMITH: Objection to the form of the
22 question.

23 Q. I'm sorry. Let me go back. The previous
24 question refers to index crimes and then it refers to those
25 serious crimes. So, this is the question.

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1 So, then by far, the largest effect that your
2 survey showed was increased pressure to decrease those
3 serious crimes; isn't that correct?

4 A. Sounds familiar.

5 Q. And decreasing crime doesn't mean misclassifying
6 crime?

7 A. Not necessarily.

8 Q. I think it was in the 2012 survey, you asked a
9 question about whether the respondent was pressured to obey
10 constitutional rights; is that correct?

11 A. Yes.

12 Q. You did not ask whether the respondents were
13 pressured to violate constitutional rights; isn't that so?

14 A. Correct.

15 Q. The same information is not provided by those two
16 questions; isn't that right?

17 A. I'm a little tired, so I need you to run that by
18 me again.

19 Q. Well, you asked were you pressured to obey
20 constitutional rights?

21 A. Yes.

22 Q. So, of course it's a police officer's
23 responsibility to obey constitutional rights, right?

24 A. Yes.

25 Q. You did not ask whether the respondent officers

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1 were pressured to violate constitutional rights?

2 A. That's correct.

3 Q. So, you don't know whether anyone would say they
4 were asked to violate anyone's constitutional rights or any
5 rights; isn't that so?

6 MR. SMITH: Objection to form.

7 A. No. My response is yes, but if there's less
8 pressure to obey constitutional rights you may -- one may
9 be more inclined to violate it.

10 Q. You didn't ask any of the respondents how many
11 times they violated someone's constitutional rights, did
12 you?

13 A. No.

14 Q. And you didn't ask the respondents how many times
15 they are aware of that somebody's constitutional rights
16 were violated because they were pressured to do so; is that
17 right?

18 A. No, I did not.

19 Q. When you spoke with Dr. Eterno after he testified
20 at his deposition, was there anything he indicated to you
21 he forgot to say that he wished he had said?

22 A. No, he just said he wished he had said things,
23 but I don't know what they are.

24 Q. He didn't tell you what he wished he had said?

25 A. No. As sure as I will feel.

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1 Q. Is it your expectation that if this case goes to
2 trial or when this case goes to trial you will both be
3 called to testify?

4 MR. SMITH: Don't answer that question.

5 Q. Well, is it your understanding that neither of
6 you is capable of addressing all of the matters discussed
7 in your report as an expert?

8 A. I think that's -- well, I know I'm not. I'll
9 speak for myself.

10 Q. Is there any section of the report that
11 Dr. Eterno did not draft?

12 A. Oh, there are parts of the report that he did not
13 draft.

14 Q. What parts did he not draft?

15 A. He didn't draft the parts on Compstat. He didn't
16 draft the parts on blue wall.

17 Q. Do you understand him to be an expert on those
18 two subjects?

19 A. Again, I'm puzzled by the word expert. I
20 understand him to be knowledgeable on those two areas, if
21 that answers your question.

22 Q. You understand him to be knowledgeable on those
23 two areas?

24 A. Yes.

25 Q. Is he as knowledgeable as you are in those two

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1 areas, as far as you're concerned?

2 A. I think he would say I'm more knowledgeable in
3 the area of Compstat since I spent more time with it.

4 Q. How about the blue wall of silence?

5 A. I don't know. I don't have the answer to that.

6 Q. In the references listed beginning on page 26 of
7 your report, Exhibit A, is there anything on that list that
8 you reviewed to assist you in preparing your report?

9 MR. SMITH: Do you want me to put it in
10 front of him?

11 MR. KRETZ: Sure.

12 MR. SMITH: There's four pages here,
13 references, that he needs to look at.

14 Q. Well, my question is: Did you look at anything
15 on that list for purposes of preparing your report?

16 A. It's hard to answer that question because we
17 review these materials, different parts, we've written a
18 lot and I can't tell you exactly when I've reviewed what.

19 Q. So, you don't recall whether for purposes of
20 writing the report --

21 A. I remember reviewing the Mollen Commission for
22 the purposes, the Mollen Commission report.

23 Q. What information was in the Mollen Commission
24 report that you wanted to review for purposes of preparing
25 your report in this case?

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1 A. The blue wall of silence.

2 Q. And did you make reference to information from
3 the Mollen report in your report for this case?

4 A. Yes.

5 Q. What else?

6 A. I looked at some of the newspaper articles that
7 talked about police statistics. The New York City public
8 advocates report.

9 Q. What information did it provide?

10 A. It provided information on the nonresponsiveness
11 in their view of the NYPD in terms of transparency.

12 Q. Anything else?

13 A. I looked at some of the Knapp Commission.

14 Q. What information did that provide?

15 A. Also on the blue wall. Most of these sources are
16 referenced in here that we use all these sources, but I
17 can't tell you specifically that we then went and read
18 prior to this because we've read these sources.

19 Q. I'm sure at some time or other in your career you
20 have, I'm sure.

21 A. Yes.

22 Q. For purposes of preparing your report, which one
23 did you review?

24 A. Did we go back to -- I can't recall going back --
25 I did look at our book, The Crime Numbers Game. I went to

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1 the report of the crime review committee. Crime reporting
2 review committee. And a few of the articles, the Weisberg
3 one.

4 Q. From 2002?

5 A. Yeah.

6 Q. Anything else?

7 A. That's all I recall.

8 Q. With respect to The Crime Numbers Game subtitled
9 management by manipulation --

10 A. Yes.

11 Q. -- what information in that book did you review
12 for purposes of preparing this report in this case?

13 A. Some of the -- I just extracted a very brief
14 extraction in terms of what the media reports were.

15 Q. On this case?

16 A. No, on crime report manipulation.

17 Q. What media reports?

18 A. 2004, 2005.

19 Q. On page 27 there's a reference to the NYPD's
20 Compstat compare statistics or composed statistics?

21 A. Yes.

22 Q. What opinion did you express in that report?

23 A. That's a journal article.

24 Q. Right, that article. I'm sorry.

25 A. It came out in 2010, so we wrote it probably in

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1 2008 or 2009. So, it's hard to remember, but we -- I think
2 this article referenced -- this article referenced our
3 first survey because -- I did some analysis of our first
4 survey. It also referenced -- since it was an
5 international journal it also referenced this phenomena in
6 other police departments around the world.

7 Q. In any of your writings have you referred Steven
8 Mauriello?

9 A. No.

10 Q. Have you ever referred to the 81st precinct?

11 A. I don't recall. We might have. We might have
12 mentioned Schoolcraft, but we didn't -- yes, we mentioned
13 Schoolcraft in the book, just the allegations, briefly. I
14 can't recall whether Mauriello's name emerged.

15 Q. In any of your presentations, did you mention
16 Mauriello or the 81st Precinct?

17 A. No.

18 Q. Is it your opinion that the NYPD considers the
19 matter of crime numbers to be a game?

20 A. No.

21 Q. Did you express the view that in the mind of some
22 it was a game in your book?

23 A. Yes.

24 Q. And whose minds do you think it was a game, if
25 anyone, in 2008 and 2009?

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1 A. To me a game is where there are role players and
2 each tries to advance their own interest. And the interest
3 in this game was to advance the interest of looking,
4 putting the best possible face on what you present to the
5 public and in that sense we don't say it in New York City
6 Police Department had an official game policy, we never
7 make that claim. But we say the result of that and the way
8 it's played out, not only with the police department, but
9 the political dictates from above, put pressure on the
10 police department which emanates down to make things look
11 in the best possible way.

12 Q. So, what are we talking about here, are we
13 talking about corruption or are we talking About human
14 nature? What is it that you think is driving this pressure
15 in the effect you say it has on everyone in the NYPD?

16 A. Well, if you go back to my quotes that you, you
17 know, suggested were professorial, they would suggest
18 that's human nature.

19 Q. They?

20 A. They, well, Demming, the one I -- Campbell, the
21 one I said. There's another person who would say it's
22 human nature would be Edward Demming, a very famous
23 business analyst who has looked at systems throughout the
24 world and widely regarded in the political world who said
25 that the more -- the extent that you primarily center on

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1 numbers, the more likely you are less aware of what's going
2 on and the more likely you're managed by fear and he wasn't
3 thinking of the police at the point, he wasn't referring to
4 that, he was thinking of business models.

5 So, if you're asking me -- it's a tough question
6 you're asking me, but if you're asking me how human nature
7 operates under a certain environment, I would say most
8 people, many people, would react the way they did. That's
9 why we say we don't focus on individuals, we don't say
10 individuals so-and-so is a bad guy or a corrupt guy.

11 We say the system provides perverse incentives
12 for people to go beyond the margins in some cases of
13 legitimacy.

14 Q. Do you know of a system of policing that doesn't
15 have that effect?

16 A. A system of policing that is more multilayered
17 looks at a wider variety of indicators, and doesn't just
18 look at your -- primarily your activity is less inclined to
19 do that.

20 Q. So, you're saying NYPD only looks at activity?

21 MR. SMITH: Objection to form.

22 A. That's not what I said. I said it's a primary
23 indices of your value.

24 Q. Well, is NYPD a social services agency or is it a
25 law enforcement agency?

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1 MR. SMITH: Objection to form.

2 Q. What is its principal responsibility?

3 MR. SMITH: Ask a question.

4 MR. KRETZ: That's a question.

5 MR. SMITH: No, it's not.

6 Q. Are they there to fight crime, are they there to
7 try to reduce crime or something else?

8 MR. SMITH: Objection to the form of the
9 question. You can answer.

10 A. The question is evident on its face. Of course
11 it's a law enforcement agency, but I don't think that
12 relates to the point I was making.

13 Q. So, tell me again, what is your point?

14 A. My point is that you can have legitimate law
15 enforcement objectives, but at the same time you can have
16 activities that don't fall within that legitimacy or you
17 could put pressure on individuals to act in a certain
18 manner where they may trespass certain people's rights and
19 so while you're supposedly a law enforcement you're also
20 supposed to respect constitutional rights. So I think your
21 dichotomy is kind of false.

22 You're supposed to enforce the law, but also
23 respect people's rights. You're supposed to do both.

24 Q. Do any of the survey results from your 2008 and
25 2012 surveys indicate that there was explicit pressure to

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1 violate the constitutional rights or any other rights for
2 the sake of achieving certain performance goals?

3 A. The survey doesn't explicitly say that except
4 that there are -- the second one says there was less
5 pressure to observe constitutional legal rights as the time
6 went on. So, that's not precisely your question, I
7 understand, but I think it's in the ballpark. I was going
8 to make another point, but I forgot it.

9 Q. In 2008 and 2009, do you think the approach of
10 NYPD, generally, was to manage by manipulation of crime
11 numbers?

12 A. No, there are other aspects to its management.

13 Q. Other aspects to its management that you believe
14 caused others to manipulate crime numbers?

15 A. I think the management, the top down pressure
16 that we allude to contributed to that, yes. And I think it
17 was -- it's very understandable that individuals might
18 succumb to that pressure.

19 Q. Prior to be retained in this case, had you
20 compiled any data or information regarding Steven
21 Mauriello?

22 A. No.

23 Q. Any data or information regarding the 81st
24 Precinct?

25 A. No.

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1 Q. Had you reached any conclusions or formulated any
2 opinions regarding Steven Mauriello?

3 A. No.

4 Q. And how about the 81st Precinct?

5 A. No.

6 Q. Have you ever done so since you were retained?

7 A. No, the only thing I can connect to is John
8 Eterno's description of what happened here, that's all I
9 can attest to.

10 Q. And in Adrian Schoolcraft's apartment you mean?

11 A. Yes. That's the only thing I have information
12 on.

13 Q. And you were asked about whether you have any
14 information to support the conclusion that the people in
15 Adrian Schoolcraft's apartment when he was declared an EDP
16 had knowledge that he had spoken to QAD and/or IAB and I
17 think the meaning of your answer is is that you have no
18 such knowledge; can you tell me what you do know?

19 MR. SMITH: Objection to the form of the
20 question. You can answer it.

21 A. I tried to say I have a vague recollection of
22 hearing in some tape, but I don't want to be extremely
23 confident in it, because I'm confident in things I say I
24 am, that I thought I read somewhere where or saw somewhere
25 that they were aware that he had contacted QAD.

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1 Q. Well, this is as you might imagine a critical
2 question in this case, do you believe the police entering
3 his apartment was an act of retaliation for something he
4 had done?

5 A. I'll try to restate --

6 Q. Have you formulated an opinion on that question?

7 A. The only opinion I have is is to subscribe to
8 what John Eterno, Dr. Eterno wrote. That in so many words,
9 that entering his apartment was consistent with what has
10 happened to other people under the blue wall of silence.

11 Q. So, in other words, you don't know whether it's
12 consistent with other incidents?

13 A. It's consistent with behaviors that we've seen in
14 other instances -- other similar kind of behavior in blue
15 wall of silence. Do I have a firsthand knowledge of it, if
16 that's your question, no.

17 Q. Or any additional knowledge?

18 A. I don't have any additional knowledge than this.

19 Q. Other than what's in the report?

20 A. That's right.

21 Q. Do you believe declaring Schoolcraft an EDP was
22 an act of retaliation?

23 A. I don't know. I don't know.

24 Q. Did you ever discuss that with Dr. Eterno?

25 A. I don't recall. I don't recall.

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1 Q. On page 3 of your report you state that
2 commanders are ranked and evaluated based on a comparative
3 crime statistics anticrime plans and it continues.

4 How do you know that commanders are ranked and
5 evaluated based on those factors that you list there?

6 A. Because I have seen discussions, I've seen -- I
7 know each commander has a commander profile. That came in,
8 I think, the second year, that commander profile has what
9 the commander has accomplished and not. When the
10 leadership of the police department meets in terms of who
11 receives a promotion or who doesn't or who has transferred
12 or not, they look at that commander profile.

13 Q. Have you ever participated in such meetings?

14 A. No.

15 Q. Has anyone told you who was in attendance at such
16 meetings if that's what they do?

17 A. I was told the commissioner's inner circle.

18 Q. I'm sorry?

19 A. Commissioner's inner circle.

20 Q. So, someone from the current commissioner's inner
21 circle?

22 A. No, not from the current.

23 Q. The previous commissioner's inner circle --

24 A. Ye.

25 Q. -- told you that they reviewed those profiles in

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1 meetings --

2 A. Yes.

3 Q. -- as part of a discussion of whether to and
4 where to assign --

5 A. Yeah.

6 Q. -- an officer?

7 A. Yes.

8 Q. And who told you that?

9 A. People at the time. I can't go into that.

10 Q. Is every conversation you have on every subject
11 confidential in your mind?

12 A. In this regard, yes.

13 Q. What research were you doing when you asked that
14 question or when you had that conversation?

15 A. I was doing research on Compstat.

16 Q. And you were about to write a book on the
17 subject?

18 A. That's correct.

19 Q. So, you consider that person what; a source that
20 doesn't have to be divulged?

21 A. No one wants to be divulged. When there is a
22 source that's willing to be divulged, I cite that source
23 and I have cited sources.

24 Q. So, that person you just were referring to
25 indicated to you I don't want you telling anybody --

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1 A. That's right.

2 Q. -- that I told you this?

3 MR. SMITH: You have to let him ask the
4 question.

5 THE WITNESS: I'm sorry.

6 MR. SMITH: I know it's late.

7 Q. Is that right?

8 A. Correct.

9 Q. Did that person also tell you or did you learn in
10 some other way that those profiles also indicated some
11 ranking of officers?

12 A. No.

13 Q. What is your basis, then, for saying that the
14 officers are ranked, commanders are ranked?

15 A. Commanders at the time told me that they were
16 ranked. They told me they were moved or promoted or not.
17 That's how I -- and I know many were reassigned, about
18 two-thirds were reassigned the very first year.

19 Q. That's different from some sort of established
20 ranking system, that's what I'm trying to find out.

21 Did somebody ever tell you there is such a
22 ranking system that's recorded?

23 A. Everything was ranked.

24 Q. And you know that commanders were put down on a
25 list --

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1 A. You would have to be --

2 MR. SMITH: You have to let him finish.

3 THE WITNESS: Oh, I'm sorry.

4 Q. -- in some sort of number order in ranking?

5 A. I don't know how they did it. I wasn't privied
6 to the process. I do know that every precinct -- the
7 precincts were ranked on a weekly basis, top ten, bottom
8 ten. Many of the precincts were ranked and that was
9 filtered into the process.

10 Q. And how do you know that?

11 A. Because I saw the rankings.

12 Q. Of precincts?

13 A. That's correct.

14 Q. Were you ever present at a Compstat meeting where
15 Steve Mauriello was at the podium?

16 A. No.

17 Do you think I can take a quick break while
18 you're looking?

19 Q. Sure.

20 MS. PUBLICKER METTHAM: The time is 6:41.

21 (Whereupon, a brief recess was taken.)

22 MS. PUBLICKER METTHAM: We're back on the
23 record and it is 6:46 p.m.

24 Q. Doctor, what other sources of income have you had
25 in 2009 other than serving as an expert witness or a

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1 consultant on our end for lawyers in litigation?

2 MR. SMITH: Don't answer that question.

3 Q. Just sources, don't tell me the amount, I just
4 want to know how else you make a living.

5 MR. SMITH: Oh, okay. All right. You can
6 answer that question. Thank you.

7 A. I have a pension and I have Social Security.

8 Q. You've not done any work other than the kind of
9 work you're doing in this case for remuneration?

10 A. I sometimes lecture at law schools.

11 Q. So, you get a fee for your appearance?

12 A. Yes, I documented them.

13 Q. When you retired in 2003, was that your choice or
14 was that a mandatory retirement?

15 A. No, it was my choice.

16 Q. You talked earlier about material that you
17 reviewed from the Floyd case, I think it was in
18 preparation -- since you wrote the report before testifying
19 today.

20 A. Yes.

21 Q. What did you look at from the Floyd case?

22 A. I looked at some of the judge's decisions, some
23 of the decision, and I looked at some of the -- I don't
24 think I looked at anything else. I looked at a good part
25 of the decision.

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1 Q. You indicated that you read some of the testimony
2 provided at the Floyd trial?

3 A. Yeah, but not in reference to your question. I
4 read it way back.

5 Q. Well, I thought you said that you looked at it
6 sometime in the past week or two?

7 A. Yeah, but now on reflection I realize I didn't
8 look at testimony in the past week. I just looked at some
9 of the decision which had -- I think the reason I said
10 testimony is because the judge's decision referred to some
11 of the testimony. So, I believe in -- I'm glad you raised
12 that, I didn't actually go to the testimony.

13 Q. You indicated that you took notes at your
14 meetings with counsel and Mr. Eterno regarding the case,
15 but then you said that you were not provided with any
16 additional factual information about the case.

17 Do I have that right?

18 A. Well, the notes were about the basic -- I don't
19 remember, it was so long ago when we first met.

20 Q. What we're interested in if you took notes that
21 contained representation about the facts we'd like copies
22 of those notes so we can see what you've been told.

23 A. I'll have to defer to my counsel on that.

24 MR. KRETZ: So, we will call for the
25 production of the notes.

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1 MR. SMITH: Right. Taken under advisement.

2 I don't think we're going to get them.

3 Q. In referring to the implementation of Compstat in
4 other police departments in other cities, you made a
5 reference to what you call Compstat light as the practice
6 elsewhere. Can you tell me what that means?

7 A. What I am referring to by Compstat light is you
8 make changes, you introduce the Compstat meetings, you
9 advance crime mapping, you advance statistical analysis and
10 you make it available to people, but what I'm referring to
11 light is that you don't also include the very fundamental
12 changes that were made in the police department when
13 Compstat started in New York which was doing away with the
14 level, which was giving more resources to local levels and
15 not centralizing it which was and with the commissioner at
16 the time and now calls reengineering and look a new of what
17 you've done rather than just superimposing this meeting
18 that's very attractive and when visitors were allowed
19 they're no longer allowed. When visitors were from other
20 police departments were allowed they would be bedazzled and
21 impressed by it. So that's in a short nutshell what I mean
22 by that.

23 Q. Do you have any information that supports the
24 conclusion that illegal quotas were imposed on anyone in
25 the 81st Precinct in 2008 and 2009?

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1 A. Do I have information on that?

2 Q. Yes.

3 A. No.

4 Q. Are you aware of any information that summonses
5 were issued without probable cause in the 81st Precinct in
6 2008 and 2009?

7 A. I don't have any separate information.

8 Q. With respect to the Schoolcraft recordings, you
9 said you listened to all or most of them when they were
10 made accessible by the Village Voice?

11 A. Yes.

12 Q. And you don't know that you listened to any of
13 those recordings ever again other than those that were
14 included in This American Life recording, that one
15 program --

16 A. Yes.

17 Q. -- that single program? Okay.

18 Dr. Silverman, do you recall from reading the QAD
19 report that there were 13 complaint reports that were
20 brought to QAD's attention by or through Adrian
21 Schoolcraft?

22 A. Yes.

23 Q. And are you aware that they ruled or found that
24 three of those he was wrong about and had not been
25 incorrectly classified?

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1 A. Yes.

2 Q. And are you aware of the remaining ten that in
3 five of those instances he was the one who initially took
4 the complaint report?

5 A. I didn't remember the distribution of it. I knew
6 he was involved in some of them, but I didn't recall how
7 many.

8 Q. Did you ask anyone anything about those five
9 complaint reports and what his role was?

10 A. No.

11 Q. Do you know anything more about it other than
12 that he was the one that took those complaint reports?

13 A. If there was more information made available to
14 me?

15 Q. I'm asking, do you know anything more about it?

16 A. Do I know anything more about it?

17 Q. Yes.

18 A. No.

19 Q. So, if he were the one responsible for
20 downgrading five out of the ten complaint reports that he
21 brought to QAD's attention, would that affect your review
22 of the circumstances here?

23 MR. SMITH: Objection to form.

24 A. I need to know what you mean by circumstance.

25 Q. Your assessment of whether he was a

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1 whistle-blower, whether he's truthful as your report says
2 he is? Anything else that you might have determined about
3 the circumstances of this case, are they affected by that
4 information?

5 MR. SMITH: Objection to the form.

6 A. I don't know because I would need to know more.
7 I mean, I would need to know why an individual would want
8 to report on something that he -- if it's true that he
9 acknowledged and he was engaged in. So he may say -- I
10 don't know what his response would be, that he was
11 compelled to do it, he was pressured to do it. I don't
12 know why the reasons why he did it. If you're asking me
13 would it be helpful for me to know more about it, I would
14 always look at it.

15 Q. Was it ever brought to your attention that some
16 concluded that Mr. Schoolcraft was orchestrating the events
17 that led to what happened in his apartment on October 31,
18 2009?

19 MR. SMITH: Objection to form.

20 A. No.

21 Q. No one has ever mentioned that to you?

22 MR. SMITH: Objection to form.

23 A. No.

24 Q. Did you happen to notice that in at least six of
25 the thirteen incidents that he brought to the attention of

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1 QAD, that those incidents, those six had not occurred until
2 after he spoke to QAD for the first time?

3 A. Are you saying they happened in between two
4 conversations he had with QAD?

5 Q. And October 31st. From the time he first was in
6 touch with QAD until October 31st.

7 A. I'm not following. How can they be in that QAD
8 report if -- I'm not following the sequence.

9 Q. From the time of his first contact with QAD until
10 October 31st, six of those incidents occurred, which would
11 mean, as you're suggesting, they occurred before his first
12 contact and his first meeting with them.

13 A. I'm sorry --

14 Q. That's not information made known to you?

15 MR. SMITH: Wait. Wait. I'm going to
16 object to the form of the question. I don't
17 think it's clear to the witness what you're
18 asking.

19 THE WITNESS: No, it's not.

20 Q. Did you pay any attention to when the complaint
21 reports were prepared of those 13 complaint reports
22 addressed by QAD?

23 A. No.

24 Q. Were you ever made aware that a memo was issued
25 in the 81st Precinct that the telephone switchboard

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1 operator, one of whom was Schoolcraft, that the operators
2 were not to be the ones to prepare complaint reports?

3 A. No.

4 Q. Is it fair to say, then, that you were unaware
5 that six of the thirteen complaint reports were prepared by
6 Schoolcraft after that memo was issued?

7 A. After the QAD memo?

8 Q. No, after the memo was issued saying that the
9 telephone switchboard operators should not be the ones to
10 prepare complaint reports.

11 A. I would have no way making that judgement if I
12 didn't know about the telephone --

13 Q. Unless you had all the information that's been
14 developed in the case.

15 A. The telephone I was not aware.

16 Q. Are you aware that Adrian Schoolcraft prepared
17 six complaint reports in 2009 that were improperly or
18 incorrectly downgraded?

19 A. Is this separate from the ones you told me about?

20 Q. Yes.

21 A. No.

22 Q. Are you aware that three of those complaints were
23 prepared by him in the last two weeks of October 2009?

24 A. No.

25 Q. Are you familiar with the research of a

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1 Mr. Frank Zimring?

2 A. Yes.

3 Q. Are you aware of his conclusion that any supposed
4 manipulation of crime statistics in NYPD was too miniscule
5 to significantly affect NYPD's overall crime statistics?

6 A. I'm aware of that.

7 Q. And what is your view of that research?

8 A. That it was inadequate.

9 Q. In what way?

10 A. He relied solely on the police department. All
11 the statistics came from the police department. He didn't
12 do any independent assessment. He neglected certain
13 information about the categorization of how you report a
14 stolen automobile, the policy changes, he ignored certain
15 policy changes or was unaware.

16 He researched at the end parrots, the NYPD's
17 assessment of our study, and his bibliography doesn't even
18 include our peer-review articles on this topic. All he
19 does is have an appendix, a reference to our surveys and
20 says that clearly these must be disgruntled commanders,
21 which was the exact line of the police department. So I
22 have great respect for him, a lot of his writing, but not
23 on this.

24 Q. It's fair to say you don't know whether they were
25 just disgruntled commanders who responded?

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1 MR. SMITH: Objection to form.

2 Q. You may answer.

3 A. It's fair to say that I don't know if they were
4 just disgruntled.

5 I don't know for a fact and neither does he. And
6 to base his information without looking at all the evidence
7 and the evidence that's the other way, without even
8 acknowledging it in a footnote, without even acknowledging
9 it in a bibliography suggests to me that that was not
10 thorough scholarship and I might add that in our book we do
11 address his points.

12 MR. KRETZ: No further questions.

13 EXAMINATION BY

14 MR. LEE:

15 Q. I'm Brian Lee. I represent one of the doctors in
16 the case.

17 A. Thank you.

18 Q. Your null hypothesis for the 2008 and 2012
19 studies was what?

20 A. That there was not -- commanders and others in
21 the police department did not feel substantial pressure.

22 Q. No or little pressure?

23 A. No or little pressure, yes.

24 Q. Now, in your survey when you had your ten items,
25 -- if you look at Exhibit C, if you go to page ENS

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1 production page 9.

2 MR. SMITH: I don't know if he has C in
3 front of him, Brian. Now he does.

4 THE WITNESS: Thank you.

5 Q. If you go to ENS production 9.

6 MR. SMITH: Yes, he's got it.

7 Q. So, you have least pressure, one; most pressure,
8 ten.

9 What is low, what is medium and what is high
10 pressure?

11 A. One to three is low, four through seven is medium
12 and eight through ten is high.

13 Q. Do you think it's significant that there was no
14 option for someone taking this survey to choose part of
15 your null hypothesis that there was no pressure?

16 MR. SMITH: Objection to form.

17 A. This survey -- most people -- this survey is
18 based on research on how people best respond to surveys.
19 And studies have shown that most people are uncomfortable
20 putting zero, when they want little, they put one and
21 there's been a study by Acten (phonetic) and I forget the
22 other person who did the a study of the optimal responses
23 to put in the survey in terms of choices and most people
24 prefer one to ten.

25 Q. That may well be the case, Doctor, but there's

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1 no option for someone taking your survey to say there was
2 no pressure, is there?

3 A. There is no option for that.

4 Q. Did you read Mr. Schoolcraft's depositions in
5 this case?

6 A. No, I already testified I had not seen it.

7 Q. Would that be important for you in rendering your
8 opinions in this case to know what Mr. Schoolcraft
9 testified to?

10 MR. SMITH: Objection to form.

11 A. Would I be interested in seeing it, yes.

12 Q. Would it be important for the opinions that you
13 have rendered in this case?

14 MR. SMITH: Objection to form.

15 A. I would have to ask you to ask that question to
16 Dr. Eterno because he's the one who made that judgment on
17 Schoolcraft.

18 Q. Have you reviewed Mr. Schoolcraft's performance
19 reports at the 81st Precinct?

20 A. No.

21 Q. And would it be important for you if his
22 performance numbers were steady and then all of a sudden
23 dropped precipitously; would that be important?

24 MR. SMITH: Objection to form.

25 A. It would be one piece of information, it would

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1 make me want to look into it even more. I would want to
2 know the situation. I would want to know the context. I
3 would want to know what preceded it, that drop.

4 Q. You didn't have that option, though, did you?

5 MR. SMITH: Objection to form.

6 A. I didn't have that material, if that's your
7 question.

8 Q. Did you read the complaint in this case that was
9 filed?

10 A. No.

11 Q. Did you read the book The NYPD Tapes?

12 A. Yes.

13 Q. And did you read that while preparing your
14 report?

15 A. No, no, I read it when it came out.

16 Q. Now, you've mentioned and you dropped the names
17 of a lot of people would have performed statistical
18 analyses over the years and what you base some of your
19 research on.

20 Are you familiar with the work of Darrell Huff?

21 MR. SMITH: Objection to form.

22 A. No.

23 Q. You are not aware of his seminal 1954 work on
24 statistics?

25 MR. SMITH: Did you say 1954?

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1 MR. LEE: Correct.

2 A. The books I'm familiar with are books on using
3 statistics for social research, that's the books we trained
4 in and the books we keep on. If it's just a book on
5 statistics that would be probably something -- that's
6 someone who is a statistician would be familiar with.

7 Q. So, you're not familiar with it?

8 A. That's correct.

9 MR. LEE: Okay, that's it for me.

10 EXAMINATION BY

11 MR. KOSTER:

12 Q. Good evening, Doctor. My name is Matthew Koster.
13 I represent one of the doctors in this matter. I just have
14 a few questions for you.

15 In the data surveys that you received, was there
16 any breakdown on precinct or precincts or areas of command
17 that the respondents served in or on?

18 A. No.

19 Q. Do you have any knowledge whether the respondents
20 in your surveys sustained any adverse career effect as a
21 result of the Compstat?

22 A. No, the only way I could peripherally respond to
23 that is that in some of the comments some have indicated
24 that, but I can't codify it and give you a graft and a
25 cross tab on it; that, I cannot do.

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1 Q. Are you aware of any articles critiquing your
2 work or findings in the areas that you've testified here
3 today?

4 A. You mean -- can you say that again.

5 (Whereupon, the referred to question was
6 read back by the Reporter.)

7 A. Well, I'm aware of Zimring, but I don't consider
8 that a critique. I consider that a -- I don't know, I'll
9 leave it at that.

10 I'm aware of articles that have praised it, but
11 you said criticizing it?

12 Q. Yes.

13 A. No, I'm sure you'll call that to my attention.

14 Q. Are you aware of any articles that critiqued the
15 methodology used for any of your studies or articles or
16 books in the areas that you testified about today?

17 A. No.

18 Q. Have you ever studied the relationship between
19 the New York City Fire Department and the New York City
20 Police Department?

21 A. No.

22 Q. Do you consider yourself qualified to testify
23 about the New York City Fire Department?

24 A. No.

25 Q. Have you read a report by a Dr. Lubin in this

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1 Q. You've just stated, correct, that --

2 MR. SMITH: Rephrase your question.

3 Q. Dr. Silverman, are there any other answers that
4 you need to correct at this time?

5 A. Not that I'm aware of. I would have to see the
6 transcript. I'm sure there were some things I might want
7 to look at again.

8 MS. PUBLICKER METTHAM: I have no further
9 questions.

10 MR. KRETZ: No further questions.

11 MS. PUBLICKER METTHAM: The time is 7:29.

12 (Whereupon, at 7:29 P.M., the Examination of
13 this Witness was concluded.)

14

15

16 _____
DR. ELI B. SILVERMAN

17

18 Subscribed and sworn to before me

19 this _____ day of _____ 20____.

20

21 _____
NOTARY PUBLIC

22

23

24

25

C E R T I F I C A T E

JOHN A. LUGO